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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

COUNTY OF LOS ANGELES and
LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,

Petitioners,

vs.

VALERIE ANN STREIT, et al.,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a county government is liable under 42 U.S.C. § 1983 for a sheriff's law enforcement activities, including operation of the jails, where state law provides that the sheriff is a state officer and does not vest law enforcement authority in the county government.

2. Where there is a split between the federal and state appellate courts over whether sheriffs in California act on behalf of the state or the county in setting county jail policy for section 1983 purposes, do considerations of comity require deference to the state appellate courts' interpretations of the state constitution and laws on this important issue?

LIST OF PARTIES

The petitioners and defendants involved in this consolidated petition are County of Los Angeles and Los Angeles County Sheriff's Department. The respondents and plaintiffs are Valerie Streit, Diego Santillana and Michael Roerich for the lead case.[1]

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[1] Respondents and plaintiffs in the related cases (consolidated appeals) are as follows: Eddie Shields, Randall Cleaves, Alfred Carrillo, Munique Williams, Michael E. White, April Marie Courie, Eric Mitchell, Diane Ramirez, Heather Yousif, Margo V. Borrup, Quinton Cooper, Ruby Sellars, Leellen Patchen, Steven Gray, Isaac Tchakmakjian, Johnny Ray Tolbert, Kevin Baxter, Joseph Whitner, Yolanda Corbert, Ronald J. Borrup, Kirk Douglas, Julian Valdez, Frank Lopez, Joe Sanchez, Jr., Moises Carranza, Hamid Shahian, Herman Wyche, Regina Lanell Reed and Roy Lee Wimberly. (App. A1-A6.)

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PETITION FOR WRIT OF CERTIORARI

The County of Los Angeles and the Los Angeles County Sheriff's Department respectfully pray that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Ninth Circuit filed on January 12, 2001, in order to resolve a direct conflict between the Ninth Circuit Court of Appeals and the California Court of Appeal on the important issues presented herein.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit was reported at 236 F.3d 552 (CA9 2001). It is reprinted in Appendix "A" hereto. (App. A.) By order filed March 14, 2001, the Ninth Circuit denied the petition for rehearing and suggestion for rehearing en banc. (App. F7.)

JURISDICTION

On March 25, 1999, the United States District Court of the Central District of California issued a memorandum order denying the County of Los Angeles and Los Angeles County Sheriff's Department's (collectively "defendants") motion to dismiss, rejecting defendants' argument that the sheriff acts as a state and not a county official when setting policies relating to law enforcement, including operation of the jails. (App. B.) The district court subsequently granted the defendants' motion for an

order to certify for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) on May 25, 1999. (App. C3.) On July 26, 1999, the Ninth Circuit granted permission to file an interlocutory appeal to the district court's order and the interlocutory appeals were thereafter consolidated. (App. A13, D1, E3.)

Defendants timely appealed to the Ninth Circuit, which affirmed in a published opinion filed on January 12, 2001. (App. A.) On March 14, 2001, the Ninth Circuit denied the defendants' timely filed motion for rehearing and suggestion for rehearing en banc. (App. F.) Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days of the denial of hearing.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL/STATUTORY PROVISIONS

The following statutory and constitutional provisions relevant to this petition are set forth in the Appendices as follows:

42 U.S.C. § 1983

California Constitution, Article V, § 13

California Civil Code § 22.2

California Government Code § 200

California Government Code § 201

California Government Code § 202

California Government Code § 203

California Government Code § 12524

California Government Code § 12550

California Government Code § 12560

California Government Code § 23013

California Government Code § 25303

California Government Code § 26605

California Penal Code § 4015

STATEMENT OF THE CASE

This petition arises from several related civil actions under 42 U.S.C. § 1983 by plaintiffs who seek to hold the County of Los Angeles and the Los Angeles County Sheriff's Department liable for the allegedly unconstitutional policies of the Los Angeles County Sheriff. Plaintiffs and respondents are former inmates of the Los Angeles County ("County") jails, were held in the County jails at different times and under different circumstances, who all claimed that they were not timely released from custody following a court order or other authority for their release. Plaintiffs seek damages on behalf of themselves and a similar proposed class of persons for such alleged "overdetentions" – though class certification has not been granted in any of the cases. Plaintiffs seek such relief against the County of Los Angeles, the Los Angeles County Sheriff's Department and several individual defendants including then Sheriff, Sherman Block (now deceased). Each of the respective complaints in the instant cases set forth causes of action both under 42

U.S.C. § 1983 and state law for the alleged overdetentions.

Defendants and petitioners County of Los Angeles and Los Angeles County Sheriff's Department (hereinafter "defendants") brought motions to dismiss under Federal Rules of Civil Procedure, Rule 12(b)(6) seeking dismissal of the claims against them brought pursuant to section 1983. Defendants, citing the California appellate court case *County of Los Angeles v. Superior Court (Peters)*, 68 Cal.App.4th 1166, 80 Cal.Rptr. 860 (1998), *review denied* (March 17, 1999),[2] asserted that, under state law, the Los Angeles County Sheriff acts on behalf of the State of California, not the County of Los Angeles, in formulating jail release policies, practices or customs. Defendants argued that because the Sheriff is not a final policymaker for the County in these actions, neither the County nor the Sheriff's Department can be subject to section 1983 liability under *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 98 S.Ct. 2018 (1978), as a matter of law.

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[2] The appellate court in *Peters* utilized the analytical framework set by this Court in *McMillian v. Monroe County*, 520 U.S. 781, 117 S.Ct. 1734 (1997) (Alabama Sheriff acted on behalf of the State of Alabama when overseeing local jails) and the California Supreme Court in *Pitts v. County of Kern*, 17 Cal.4th 340, 949 P.2d 920, 720 Cal.Rptr.2d 823 (1998) (District Attorney acted on behalf of the State of California, and not the local counties, when prosecuting violations of state law) – in holding that sheriffs in California act on behalf of the State, and not counties, in setting policies on releasing persons from county jail. *Peters*, 68 Cal.App.4th at 1178.

The district court denied defendants' motions in all the related cases finding that the Sheriff is a final policymaker for the County even though, as the California appellate court has recognized, the County Sheriff acts as a state official performing state law enforcement duties and not as a policymaker on behalf of the County "in setting policies concerning release of persons from the Los Angeles County jail." (App. B7, B11.) The district court rationalized reaching an opposite conclusion to that of the state appellate court by finding a purported distinction between the sheriff's "law enforcement duties" and the sheriff's "operational or administrative duties." (App. B8.)

The district court certified the orders denying defendants' motions to dismiss in five of the cases for immediate appeal pursuant to 28 U.S.C. § 1292(b), finding that there was "a substantial ground for difference of opinion as to whether the sheriff is acting on behalf of the County or State when effectuating the release of prisoners who are entitled to be released." (App. C10.) The Ninth Circuit subsequently granted permission to take an interlocutory appeal.[3] (App. D.)

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[3] Concurrently, defendants also filed notices appealing the orders denying the respective motions in all of these cases on the bases that the district court's orders were immediately appealable pursuant to 28 U.S.C. § 1291 and the collateral order exception to the final judgment rule. *See, Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546, 69 S.Ct. 1221, 1226 (1949). As such, the Ninth Circuit had jurisdiction over all of the appeals pursuant to 28 U.S.C. § 1291 as well as 28 U.S.C. § 1292(b).

On appeal, the Ninth Circuit Court of Appeals affirmed the denial of defendants' motions to dismiss in a published opinion. (App. A.) The court of appeals determined that the Los Angeles County Sheriff acts as the final policymaker of the County of Los Angeles, rather than an official of the State of California, in administering jail policy concerning release of prisoners. (App. A28.) The basis for the court of appeals' opinion was both straightforward and superficial. In the court of appeals' view, because the Sheriff looks more like a County official than a State official, the County should be held liable under section 1983 for the Sheriff's activities relating to enforcement of state law, including maintaining the local jails.

The court of appeals initially attempted to draw a "subtle" distinction between a sheriff "[a]cting upon a warrant [which] is a law enforcement function" (which is tasked under California state law per California Government Code § 12560) and "[s]earching for wants and holds that may or may not have been issued" properly (for which the Sheriff answers to the County) (App. A26-27) in an attempt to distinguish the state appellate court's holding in *Peters*. The court of appeals, however, ultimately held that "even if the case were on all fours we would not be bound by *Peters'* conclusion regarding section 1983 liability because such questions implicate federal, not state, law." (App. A27.)

The only way for the Ninth Circuit to have arrived at a decision contrary to the state appellate court on the same issue was to employ an analysis rejected by this Court in *McMillian*, i.e., an analysis which focused upon the characterization or mere "label" of the sheriff as a

"county" official rather than on the controlling question, i.e., whether the County or the State can "control" the sheriff with regard to the function at issue. In so holding, the Ninth Circuit ignored the actual distribution of authority over law enforcement under California law and thus, consequently, ignored the real issue that must be addressed in order to determine if the Sheriff is a "policy-maker" for the County as required by *Monell, supra* and its progeny.

REASONS FOR GRANTING THE WRIT

There is currently a split between the federal and state appellate courts over whether California sheriffs act on behalf of the state or county in setting county jail policy. The Ninth Circuit's decision should be reviewed to resolve the conflict it has created with the state appellate court as well as the California court of last resort on the proper analysis to be applied in the determination of whether a particular county officer is a policymaker for the state or county government for purposes of section 1983. In refusing to be "bound" by the state appellate court's determination, based on the same California statutes, that sheriffs are state rather than county officials when setting policies on releasing persons from county jail, the published decision raises serious concerns relating to principles of state sovereignty and comity. Moreover, in reaching a contrary conclusion, the Ninth Circuit in this case employed an analysis disapproved by the California Supreme Court in *Pitts* and rejected by this Court in *McMillian*, i.e., an analysis which focused upon the mere "label" of the sheriff as a "county" official rather

than on the controlling question, i.e., who actually *controls* the conduct of the county officer.

I. THE NINTH CIRCUIT'S OPINION DIRECTLY CONFLICTS WITH CALIFORNIA LAW WHICH HOLDS THAT A SHERIFF IS A STATE, NOT A COUNTY, POLICYMAKER WHEN PERFORMING LAW ENFORCEMENT ACTIVITIES, INCLUDING OPERATING LOCAL JAILS.

This Court has made it abundantly clear that the question of whether an official has policymaking authority and whom that official has policymaking authority for is ***wholly dependent*** on an analysis of state law. *See McMillian, supra,* 520 U.S. at 781. This Court's conclusion in *McMillian* that the Alabama county sheriffs act as agents of the state was "*dependent* on the definition of the official's functions under relevant *state law.*" *Id.* at 781 (emphasis added); *see also, Jett v. Dallas Indep. School Dist.,* 491 U.S. 701, 737, 109 S.Ct. 2702, 2724 (1989) (White, J., dissenting) ("whether a particular official has 'final policymaking authority' is a question of *state law*"); *accord, City of St. Louis v. Praprotnik,* 485 U.S. 112, 124, 108 S.Ct. 915, 924 (1988) (Brennan, J., concurring) ("identification of policymaking officials is a question of state law"). As this Court has recognized, it is therefore "entirely natural" that sheriffs may be deemed county officers in some states but state officers in others. *McMillian, supra,* 520 U.S. at 785.

Thus, while federal law provides the basis for interpreting 42 U.S.C. § 1983, federal law itself clearly

provides that ***state law*** controls the scope of section 1983 liability inasmuch as state law defines the "actual function of a governmental official." *Id.* at 786. In fact, this Court has unequivocally stated that "identification of policymaking officials is ***not a question of federal law***. . . . " *Praprotnik*, 485 U.S. at 124 (emphasis added).

Furthermore, this Court has long held that " 'an intermediate appellate state court . . . is a datum for ascertaining state law which is not to be disregarded by a federal court *unless it is convinced by other persuasive data that the highest court of the state would decide otherwise.*' " *Comm'r v. Estate of Bosch*, 387 U.S. 456, 465, 87 S.Ct. 1776, 1782 (1967) (original emphasis) citing *West v. American Telephone & Telegraph Co.*, 311 U.S. 223, 237, 61 S.Ct. 179, 183 (1940); *see also, Lewis v. Tel. Employees Credit Union*, 87 F.3d 1537 (CA9 1996). Finally, this Court has recognized that policy and comity generally favor federal courts to give deference to state appellate courts' interpretations of state law. *Kolender v. Lawson*, 461 U.S. 352, 355-56, 103 S.Ct. 1855, 1857 (1983);[4] *see also, City of Meridian v. S. Bell*

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[4] *See also, Brockett v. Spokane Arcades, Inc.*, 454 U.S. 1022, 102 S.Ct. 557 (1981) (dissent by Chief Justice Berger, joined by Justices Powell and Rehnquist):

> "The policies of federalism and comity militate in favor of affording state judges – who are as capable as are federal judges of enforcing the Constitution of the United States, and have taken the same oath to do so – the initial opportunity to consider the scope and validity of state statutes. This is particularly so when the state law under consideration has never been applied, and when its interpretation is uncertain; in such a case the state court's construction of the statute may obviate the need for adjudication of the federal

Tel. & Tel. Co., 358 U.S. 639, 641, 79 S.Ct. 455, 457 (1959) (proper exercise of federal jurisdiction requires that controversies involving unsettled questions of state law be decided in the state tribunals preliminarily to a federal court's consideration of the underlying federal constitutional questions).

Contrary to the foregoing controlling principles, the Ninth Circuit in this case imposed its own interpretation of state law in direct contravention of California's interpretation of its own constitution and statutes. As discussed below, an examination of California law reveals that sheriffs in California do not speak for the counties in the area of law enforcement, because their authority over law enforcement does not emanate from the boards of supervisors (the governing bodies for the counties) and cannot be withdrawn by the boards of supervisors. Application of the proper analysis by the Ninth Circuit in this case would have yielded the same result as the California appellate court in *Peters*, i.e., that only the State, not the County through the Board of Supervisors, has the right to control the Sheriff with regard to activities relating to enforcing state law, including the administration of local jails.

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constitutional issues, or the state court may resolve those issues as we would."

Id. at 1024.

A. A State Appellate Court, Using The Framework Set By This Court In *McMillian* And The State's Highest Court In *Pitts*, Has Analyzed The Same Issue Presented By The Ninth Circuit And Reached An Opposite Conclusion.

Using the framework set by this court in *McMillian*, the California Supreme Court in *Pitts* addressed the issue of whether a County employee who is also a State constitutional officer functions as a policymaker for the State or the County for purposes of the County's *Monell* liability under section 1983. *Pitts*, 17 Cal.4th at 356-57. In holding that district attorneys are controlled by the State, not the County, despite numerous provisions of California law that label district attorneys as "county" officers, the *Pitts* court noted the following: (1) district attorneys are supervised by the Attorney General; (2) the County Board of Supervisors is statutorily barred from obstructing the district attorneys' investigative or prosecutorial functions; and (3) the powers and duties of counties include no provisions in the area of law enforcement. *Id.* at 356-59.

Following the rules of both *McMillian* and *Pitts* and conducting a careful analysis of both California constitutional and statutory law, a three-judge panel of the California appellate court in *Peters* found that the same or parallel provisions which gave State control over district attorneys of the individual counties also give the State control over the sheriffs of the individual counties. *Peters*, 68 Cal.App.4th at 1178. Moreover, the *Peters* court found that the specific function at issue in that case, like the instant case, i.e., operation of the county jails, clearly falls within the realm of functions over which the State, not

the Board of Supervisors, exercises control.[5] Specifically, the California appellate court concluded that "in setting the policies **governing release of prisoners** from the Los Angeles County jail, the Los Angeles County Sheriff acts as a state official rather than a policymaking official of the County of Los Angeles." *Id.* at 1178 (*emphasis added*). For that reason, the California appellate court held the County could not be sued under section 1983 in *Peters* or "other similar cases." *Id.*

In reaching a contrary conclusion, the Ninth Circuit in this case employed an analysis rejected by this Court in *McMillian*, i.e., an analysis which focused upon the characterization of the sheriff as a "county" official rather than on the controlling question, i.e., whether the county or the state can "control" the sheriff with regard to the function at issue. Rather than focus on statutes which have anything to do with who actually controls the sheriffs, the Ninth Circuit erroneously focused on various statutes that appear to "label" a sheriff a "county" officer.[6] As this Court has cautioned in *McMillian*, however,

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[5] The plaintiff in *Peters*, like the plaintiffs in the instant case, was a former jail inmate who alleged that, after posting bail, she was overdetained for ten days and held on a warrant belonging to someone else. *Peters*, 68 Cal.App.4th at 1168. The County demurred to the plaintiff's section 1983 (*Monell*) cause of action arguing that, in operating the County jail, Sheriff Block acted as a state official rather than a policymaking County official, such that the County cannot be sued under section 1983. *Id.* The trial court overruled the demurrer and the County filed a petition for writ of mandate which, after briefing and oral argument, was granted.

[6] Significantly, a different three-judge panel of the Ninth Circuit in *Weiner v. San Diego County*, 210 F.3d 1025 (CA9 2000),

superficial appearances alone cannot justify imposing on the counties liability for every unconstitutional policy that the sheriff may choose to adopt. In other words, that sheriffs are frequently termed "county officers" does not alter the source of the authority they exercise.

Moreover, the Ninth Circuit improperly placed much stock on salary provisions. As the California Supreme Court in *Pitts* noted, the fact that a California county has the ability to set a salary for an employee "does not translate into *control* over him." *Pitts*, 17 Cal.4th at 355. In addition, the Ninth Circuit's erroneous conclusion that the Los Angeles County Board of Supervisors has control over the Sheriff's operation of the County jail (based on a misinterpretation of California Government Code §§ 25303 and 23013) contravenes relevant California authority. Indeed, Government Code § 25303 makes it abundantly clear that

> "[t]his section shall not be construed to affect the *independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff* and district attorney of a county. The board of supervisors *shall not obstruct the*

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analyzing provisions of California constitutional and statutory law, held in accord with the California Supreme Court in *Pitts*, i.e., a district attorney is a state official for purposes of section 1983 when engaged in the prosecutorial function.

Notably, the court in *Weiner* stated that the "fact that California statutory law list district attorneys as county officers is not dispositive because, as discussed in *McMillian*, the *function* of the district attorney, including who can control the district attorney's conduct is at issue." *Id.* at 1030 (emphasis added).

> *investigative function of the sheriff of the county. . . . "*

CAL. GOV'T CODE § 25303 (emphasis added). As California courts have made clear, "the board [of supervisors] not only ha[s] no duty but also *no right to control the operation of the jail." Brandt v. Bd. of Supervisors*, 84 Cal.App.3d 598, 602, 147 Cal.Rptr. 468, 471 (1978) (emphasis added); *see also, Dibb v. County of San Diego*, 8 Cal.4th 1200, 1209 n.4, 884 P.2d 1003, 1008, 36 Cal.Rptr.2d 55 (1994) (where the California Supreme Court recognized that the county board of supervisors is powerless to " 'direct the manner in which the [sheriff's] duties are performed.' ").

None of the criteria which the Ninth Circuit relied upon in support of its holding that the Sheriff exercises County authority alters the status of California sheriffs as constitutional officers of the state who, in enforcing state law, exercise state authority. Because the California appellate court in *Peters*, relying on the analysis and guidance provided by this Court in *McMillian* and the California Supreme Court in *Pitts*, has concluded that the Los Angeles County Sheriff acts as a State officer when formulating jail policies, the Ninth Circuit was bound to conclude the same. The Ninth Circuit's initial attempts to distinguish the facts of *Peters* from this instant case is superficial at best. Moreover, the Ninth Circuit's blatant refusal to follow a state appellate court's interpretation of state law by claiming "even if the case were on all fours we would not be bound by *Peters'* conclusion regarding section 1983 liability because such questions implicate federal, not state, law" (App. A544) contravenes the controlling principles repeatedly emphasized by this Court

in *McMillian, Jett,* and *Praprotnik* as well as principles of comity.

Application of the proper analysis by the Ninth Circuit would have yielded the same result as *Peters,* i.e., that only the state, not the counties through the boards of supervisors, have a right to control sheriffs with regard to law enforcement activities including operating the local jails.

B. Article V, § 13 Of The California Constitution And Government Code §§ 12560 And 12524 Clearly Establish That The Attorney General Is Vested With The Authority To Review And Control The Law Enforcement Activities Of The Sheriffs.

In considering which entity supervises the work of the district attorney, the California Supreme Court in *Pitts* noted that Article V, § 13 of the California Constitution places supervision of the State's several district attorneys with the Attorney General. *Pitts,* 17 Cal.4th at 356-57. Significantly, supervision of California sheriffs is also placed under the Attorney General by the *same* constitutional provision. Specifically, Article V, § 13 provides:

> "The Attorney General shall have direct supervision over every district attorney and **sheriff** and over such other law enforcement officers as may be designated by law, **in all matters pertaining to the duties of their respective offices,** and may require of any said officers to make reports concerning the investigation, detection, prosecution and **punishment of crime** in their

> respective jurisdictions as to the Attorney General may seem advisable."

CAL. CONST. ART. V, § 13. (Emphasis added).

Moreover, California district attorneys and sheriffs have been legislatively placed under the Attorney General's supervision by almost duplicate statutes. *See, Pitts*, 17 Cal.4th at 357-58, nn. 5 and 6; CAL. GOV'T CODE §§ 12550, 12560 and 12524. In fact, California Government Code § 12560 not only gives the Attorney General "direct supervision" over sheriffs wherein the Attorney General may require "reports concerning the investigation, detection and punishment of crime in their jurisdiction," but also empowers the Attorney General to "direct the activities of any sheriff relative to the investigation or detection of crime."[7] CAL. GOV'T CODE § 12560. Moreover, Government Code § 12524 authorizes the Attorney General to "call into conference the district attorneys **and sheriffs** of the several counties . . . for the purpose of discussing the duties of their respective offices, with the view of uniform and adequate enforcement of the laws of this state as contemplated by Section 13 of Article V of the Constitution of this state." CAL. GOV'T CODE § 12524. (Emphasis added). The Attorney General is also empowered to appoint a competent person to perform the duties of a sheriff, who will have all the power of a sheriff with respect to the matter for which he/she is appointed.

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[7] Notably, an almost identical provision under Alabama law was instrumental in influencing this Court's conclusion that Alabama sheriffs must be considered state officials. *McMillian, supra*, 520 U.S. at 791 (Alabama Attorney General empowered by statute to "direct the Sheriff to investigate 'any alleged violation of law in their counties' ").

See CAL. GOV'T CODE § 12561. In contrast, as emphasized by the *Pitts* court, California Government Code § 25303 specifically precludes any action by the county board of supervisors which "obstruct[s]" the sheriff's or district attorneys' performance of their duties, and that section "shall not be construed to affect the **independent and constitutionally and statutorily designated investigative and prosecutorial . . . functions of the sheriff and district attorney** of a county." *Pitts*, 17 Cal.4th at 358. (Emphasis added).

C. California Government Code § 26605 Vests The Sheriff With Exclusive Authority Over The County Jails While California Law Specifically Deny The County Board Of Supervisors The Right To Control The Operation Of The Jails.

By legislative mandate, the California sheriffs are required to "take charge of and be the sole and exclusive authority to keep the county jail and the prisoners in it. . . . " CAL. GOV'T CODE § 26605. In contrast, the county boards of supervisors have "no direct control" over the sheriffs in regard to the operation of the county jails. *See Peters*, 68 Cal.App.4th at 1177. As California courts have made abundantly clear, "the board not only ha[s] no duty but also **no right to control the operation of the jail**." *Brandt*, 84 Cal.App.3d at 602; *see also, Peters*, 68 Cal.App.4th at 1176. Moreover, while Government Code §§ 200, 201, 202 and 203 provide that the State (1) has the rights prescribed "over persons within its limits," (2) may "punish for crime;" (3) "may imprison or confine for protection of the public;" and (4) "may establish custody and restraint" of certain persons, respectively, " 'the

powers and duties of the counties themselves . . . do not include any provision in the area of law enforcement.' " *Pitts*, 17 Cal.4th at 359.[8]

Finally, California case law also dispels any argument that the limited responsibility that the Board of Supervisors has toward the County jails, that of providing funding for food, clothing,-bedding and other expenses (CAL. PENAL CODE § 4015) would be sufficient to hold the County liable under 42 U.S.C. § 1983 in this case. As the *Brandt* court noted, "[o]nly the sheriff has control of and responsibility for distribution and training of personnel **and the specific use of the funds allotted to him.**" *Brandt*, 84 Cal.App.3d at 602 (emphasis added).

Indeed, relying on *McMillian*, the Eleventh Circuit subsequently rejected a similar argument that a County Commission's funding of and inspection authority over the County jail means the Sheriff operates the jail as a county rather than state official.

> "The Alabama Code provides for the counties to remain informed about conditions within the

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[8] The Ninth Circuit misinterpreted Government Code § 25303 as giving boards of supervisors control over the sheriffs' operation of the county jails for the management of the individual county jails so long as the boards do not "obstruct the investigative functions of the sheriff of the county." That statute does not provide that the county *controls* the jail, but rather authorizes the county to transfer control of the county jail to a county created department of corrections. If the county already had control over the jail, as the Ninth Circuit concluded, this provision would be meaningless. Stated another way, the statute simply authorizes the county to assume control of the jail, something it did not have prior to the existence of that statutory authority.

> **jails. We conclude that the statutes are entirely consistent with the counties' limited role in building and funding the jails and do not imply or impart any control over the jails' operation."**

Turquitt v. Jefferson County, 137 F.3d 1285, 1290 (CA11 1998) (emphasis added). Moreover, even though Alabama law expressly empowers the County Commission "to inspect the jail without notice to the sheriff," the *Turquitt* court concluded this just represents "a reasonable way for the county to learn what its appropriations buy and whether future funding should be increased or redirected." *Id.*

D. Under Common Law, The California Sheriff Was Considered The Representative Of The Sovereign.

Lastly, it should not be overlooked that in *McMillian*, this Court also found significant the common law history of the sheriff as an officer or agent of the King, and the continuation of that common law tradition in the United States. *McMillian*, 520 U.S. at 793-95. In characterizing the plaintiff's argument as "simply a disagreement with the ancient understanding of what is meant to be a sheriff," this Court therefore evidenced its understanding that under common law, a sheriff is a state officer while carrying out his duty to keep the peace. *Id.* at 795. Significantly, the common law in England, insofar as it is not repugnant to or inconsistent with the laws of the state, is the rule of decision in all California courts. *See* CAL. CIVIL CODE § 22.2. There is therefore no reason to believe a

California sheriff has lost his common law character as the representative of the sovereign.

II. THE QUESTIONS PRESENTED ARE IMPORTANT TO THE PRINCIPLES OF STATE SOVEREIGNTY AND COMITY.

The Ninth Circuit's published decision raises serious concerns relating to principles of state sovereignty and comity. The Ninth Circuit's analysis would profoundly impact on state sovereignty, making the federal courts the final arbiter of who acts on behalf of the State of California. This opinion, therefore, is in direct conflict with *McMillian*'s proviso that "States have wide authority to set up their state and local governments as they wish." *McMillian*, 520 U.S. at 795. The attempt of the federal judiciary to inject itself into a state's decision-making process regarding whether an individual acts on its behalf should not be taken lightly. This is especially so where the California courts have held that sheriffs in California are state actors, not county actors, in setting county jail policies, and, particularly where the Legislature has not taken any contrary action in response to this interpretation. Under these circumstances, the federal judiciary should not be attempting to second-guess the State's legitimate governing process.

Not only does the Ninth Circuit's opinion completely disregard the states' sovereign choice in allocating governmental authority, but it also raises serious concerns relating to principles of comity. The objective of comity is to avoid the maintenance within a state of two divergent or conflicting systems of law, one to be applied in state

courts, the other to be availed of in the federal courts. That object would be thwarted if the federal courts were free to choose their own rules of decision whenever the highest court of the state has not spoken. *See generally, West*, 311 U.S. 223.

In *West*, this Court held that federal courts must follow the decisions of state courts regarding controlling state law. *Id.* at 236-37. In so holding, the Court stated:

> "A state is not without law save as its highest court has declared it. There are many rules of decision commonly accepted and acted upon by the bar and inferior courts which are nevertheless laws of the state although the highest court of the state has never passed upon them. In those circumstances, a federal court is not free to reject the state rule merely because it has not received the sanction of the highest state court, even though it thinks the rule is unsound in principle or that another is preferable. State law is to be applied in the federal as well as the state courts and it is the duty of the former in every case to ascertain from all the available data what the state law is and apply it rather than to prescribe a different rule, however superior it may appear from the viewpoint of 'general law' and however much the state rule may have departed from prior decisions of the federal courts."

Id. (citing *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 78, 58 S.Ct. 817 (1938)).

In this particular case, the Ninth Circuit has analyzed virtually the same state statutes that the state appellate

court in *Peters* analyzed, but came to the opposite conclusion. The Ninth Circuit simply erred in imposing its own interpretation of California law in complete disregard of the state court's interpretation of its own laws. In doing so, the Ninth Circuit improperly interjected its own views of what the California law should be instead of what it is. *See Martinez v. Gomez*, 137 F.3d 1124, 1126 (CA9 1998) ("our role is to determine what the California law is, not what it should be. Whether [this case] should be overruled . . . is a matter we must leave to the California courts and California legislature.").

Moreover, the Ninth Circuit's cavalier disregard of state appellate precedent will not only result in lack of uniformity in the interpretation of state law, but it promises to pave way for forum shopping. Indeed, while state courts are bound by *Peters*,[9] the district courts in California assert that they are not bound to follow opinions of the appellate state courts. Until this conflict between the state and federal appellate courts in California is resolved, the forum in which a section 1983 claim is filed will likely determine whether or not a sheriff is deemed to be a state or county actor in a particular action. Uniformity of decisions for the federal and state appellate courts on the issue of whether California sheriffs act on behalf of the counties or on behalf of the State in setting policies relating to law enforcement activities for the purposes of *Monell* liability under section 1983 is therefore required to prevent forum shopping problems

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[9] *See Rohr Aircraft Corp. v. County of San Diego*, 51 Cal.2d 759, 764, 336 P.2d 521, 524 (1959) and *Garcia v. Superior Court*, 42 Cal.App.4th 177, 181, 49 Cal.Rptr.2d 580, 582 (1996).

throughout California and avoid inequitable administration of the laws.

Review is thus warranted so this Court can provide further guidance to federal and state appellate as well as trial courts on this important issue of law.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Dated: June 12, 2001

Respectfully submitted,

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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EDDIE SHIELDS, individually and as a class representative, *Plaintiff-Appellee,* v. COUNTY OF LOS ANGELES, a governmental entity; JERRY HARPER, Undersheriff; MICHAEL GRAHAM, Assistant Sheriff; BARRY KING, Chief; BOB PASH, Chief; DANIEL BURT, Commander, *Defendants-Appellants.*	No. 99-55898 D.C. No. CV-98-09695-WJR

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SHERMAN BLOCK, Sheriff, individually and in his Official Capacity,

Defendant,

and

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,

Defendant-Appellant.

LEELLEN PATCHEN, individually and as class representative; STEVEN GRAY, individually and as class representative; ISAAC TCHAKMAKJIAN, individually and as class representative,

Plaintiffs-Appellees,

v.

COUNTY OF LOS ANGELES, a governmental entity; LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellants.

No. 99-56042

D.C. No. CV-98-09574-WJR

MICHAEL E. WHITE; APRIL MARIE COURIE; ERIC MITCHELL; DIANE RAMIREZ, individually and as class representative; HEATHER YOUSIF, individually and as class representative; MARGO V. BORRUP, individually and as class representative; QUINTON COOPER; RUBY SELLARS; LEELLEN PATCHEN, individually and as class representative; STEVEN GRAY, individually and as class representative; ISAAC TCHAKMAKJIAN, individually and as class representative; EDDIE SHIELDS, individually and as class representative; DIEGO SANTILLANA, individually and as class representative; MICHAEL ROERICH, individually; RANDALL CLEAVES, individually and as class representative,

Plaintiffs-Appellees,

v.

SHERMAN NMI BLOCK, Sheriff, individually and in his official capacity,

Defendant,

and

COUNTY OF LOS ANGELES, a governmental entity; LOS ANGELES COUNTY SHERIFF DEPARTMENT, as Doe 1,

Defendants-Appellants.

No. 99-56233

D.C. No. CV-97-03826-WJR

SAMUEL GLADNEY, *Plaintiff-Appellee,* v. COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT; ESTATE OF SHERMAN BLOCK; JERRY HARPER; MICHAEL GRAHAM; ROBERT MANN; BARRY KING; DANIEL BURT, *Defendants-Appellants.*	No. 99-56310 D.C. No. CV-99-00586-WJR
MUNIQUE WILLIAMS; MICHAEL E. WHITE; APRIL MARIE COURIE; ERIC MITCHELL; DIANE RAMIREZ, individually, and as class representative; MARGO V. BORRUP, individually, and as class representative; QUINTON COOPER; RUBY SELLARS, *Plaintiffs-Appellees,* and JOHNNY RAY TOLBERT; KEVIN BAXTER, individually and as class representatives and in their capacities as taxpayers; JOSEPH WHITNER, individually, and as class representative; YOLANDA CORBERT, individually, and as class representative; CASSONDRA MCNAIR, individually, and as class representative; RONALD J. BORRUP, individually, and as class	No. 99-56766 D.C. No CV-97-03826-WJR OPINION

representative; KIRK DOUGLAS; JULIAN VALDEZ; FRANK LOPEZ; JOE SANCHEZ, JR.; MOISES CARRANZA; HAMID SHAHIAN; HERMAN WYCHE; DUC HUU PHAM; REGINA LANELL REED; ROY LEE WIMBERLY; GREGORY WHITE; EDWARD ALLEN PALMER,

Plaintiffs,

v.

SHERMAN BLOCK, individually and in his official capacity; JERRY HARPER, Undersheriff; MICHAEL GRAHAM, Assistant Sheriff; BARRY KING, Chief; DOES 1 THROUGH 1000, individually and in their official capacities,

Defendants,

and

COUNTY OF LOS ANGELES, a governmental entity,

Defendant-Appellant.

Appeals from the United States District Court
for the Central District of California;
William J. Rea, District Judge, Presiding.

Argued and Submitted
February 10, 2000 – Pasadena, California

Filed January 12, 2001

Before: Harry Pregerson, Warren J. Ferguson, and
Kim McLane Wardlaw, Circuit Judges.

COUNSEL

David D. Lawrence, Scott D. MacLatchie, and Chandra Gehri Spencer, Franscell, Strickland, Roberts, & Lawrence, Pasadena, California, for the defendants-appellants.

John Burton, Law Offices of John Burton, Pasadena, California; Barrett S. Litt, Litt & Associates, Los Angeles, California, for the plaintiffs-appellees.

OPINION

WARDLAW, Circuit Judge:

Does the Los Angeles County Sheriff's Department (the "LASD") in adopting and administering its policy of requiring that a records check, including review of all wants and holds received on a prisoner's release date, act on behalf of the state of California or on behalf of the County of Los Angeles (the "County")? The answer to this question determines whether the County may be subject to liability under 42 U.S.C. § 1983 and *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). Because we conclude that the LASD, when implementing its policy of conducting prisoner release records checks, acts for the County in its capacity as the administrator of the Los Angeles County jails, we hold that both the LASD and the County are subject to liability under section 1983. We also reject the LASD's contention that it is an "arm of the state," reiterating our determination that it is subject to liability under section 1983. We also conclude that the

LASD is a "public entity" that is separately suable in federal court. We have jurisdiction under 28 U.S.C. §§ 1291 and 1292(b), and we affirm.

I. BACKGROUND

Appellees brought suit against the County, its late Sheriff, Sherman Block, the LASD, and various LASD officials responsible for the management and operation of the Los Angeles County jails. The appellees allege that they were detained in county jails after all legal justification for their seizure and detention ended, in violation of both federal and state law.

Before an inmate is released from prison, the LASD conducts a check of the Automated Justice Information System ("AJIS"), a computerized law enforcement database, to confirm that the prisoner is not wanted by any other law enforcement agency. It is the LASD's policy, however, to run the AJIS check only after all wants and holds that arrive on the day a prisoner is scheduled for release are inputted into the database. Due to the high volume of wants and holds received each day, the inputting process can, and often does, take between one to two days to complete. It is only after the inputting process is complete and the computer check run, that the LASD begins the administrative steps toward a prisoner's release. Although no longer required to serve time, these prisoners must remain in jail during the inputting period, extending their incarceration beyond their release date.[1]

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[1] For an in-depth discussion of the LASD's procedure, see *Fowler v. Block*, 2 F.Supp.2d 1268, 1277-79 (C.D. Cal. 1998), *rev'd*,

Appellees seek monetary damages for overdetention in each of these six separately filed actions.[2] The County and LASD moved to dismiss the appellees' suits. In all of the district court actions but one, the County moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the section 1983 claims brought against it.[3] In the other district court action, the County moved for summary

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185 F.3d 866 (9th Cir. 1999). In *Fowler*, the district court found that "in the face of [a] state court's 'clearly established' release order, it was unreasonable for the [Sheriff] to do more than simply 'check-out' the Plaintiff after he was returned to custody." *Id.* at 1279. Accordingly, the district court found that AJIS checks conducted after a prisoner's release and resulting in overdetention were impermissible and the sheriffs were not entitled to qualified immunity. *Id.* We subsequently reversed and remanded this case on procedural grounds, and did not reach the constitutional issues.

In at least one other district court case, a preliminary injunction was issued ordering the LASD to desist in delaying a prisoner's release upon the completion of his or her sentence. *See Vanke v. Block*, No. 98-4111 (C.D. Cal. Nov. 7, 1998). In *Vanke*, the district court found that the delays in the AJIS checks process deprived the detainees of their Fourth and Fifth Amendment rights.

[2] One additional appeal was heard on a related matter in *Williams v. Block, et al.*, No. 98-55609. The plaintiff, Williams, appealed the district court's denial of her motion for class certification. We reversed and remanded the case to the district court, but since our ruling, the parties have stipulated to dismiss the case.

[3] The County moved for dismissal in the *Cleaves, et al. v. County of Los Angeles, et al.*, No. CV-98-09573-WJR; *Gladney v. County of Los Angeles, et al.*, No. CV-99-00586-WJR; *Patchen, et al. v. County of Los Angeles, et al.*, No. CV-98-09574-WJR; *Shields v. County of Los Angeles, et al.*, No. CV-98-09695-WJR; and *Streit, et al. v. County of Los Angeles, et al.*, No. CV-98-09575-WJR.

judgment on the appellees' section 1983 claims.[4] The LASD moved under Rule 12(b)(6) to dismiss all six actions in one consolidated motion.

Relying on *McMillian v. Monroe County*, 520 U.S. 781 (1997), and the California Court of Appeal decision in *County of Los Angeles v. Superior Court (Peters)*, 80 Cal. Rptr. 2d 860 (Ct. App. 1998), the County argued that because the Sheriff of Los Angeles (the "Sheriff") functions as a state – not county – official engaged in a law enforcement function, the County cannot be sued under 42 U.S.C. § 1983 for the alleged constitutional torts of the Sheriff or his deputies. The LASD similarly contended that because it is an "arm of the state,"[5] the LASD is not within the section 1983 definition of "person," and therefore it could not be held liable. The LASD also urged dismissal on the grounds that it is not a separately suable public entity under California Government Code § 811.2.

The district court rejected each of these arguments and denied the LASD's motion to dismiss all claims. It denied in part, and granted in part, the County's five motions for dismissal in a series of roughly identical

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[4] The County moved for summary judgment in *Williams, et al. v. Block, et al.*, No. CV-97-03826-WJR.

[5] *See Durning v. Citibank*, 950 F.2d 1419, 1423-24 (9th Cir. 1991). In *Durning*, we explained that "[u]nder the 'arm of the state' doctrine, a state agent or agency is immune from suit under the Eleventh Amendment because the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials [or state institutions] are nominal defendants." *Id.* (citations omitted).

orders.[6] In its joint-tentative ruling denying the County's motions to dismiss and the LASD consolidated motion to dismiss, the district court distinguished *Peters*, which broadly held that "in setting policies concerning the release of persons from the Los Angeles County jail, the Los Angeles County Sheriff acts as a state officer performing state law enforcement duties, and not as a policymaker on behalf of the County of Los Angeles." *Peters*, 80 Cal. Rptr. 2d at 868. The court noted that the law enforcement function involved in *Peters* was "determining whether to release a person who may be subject to arrest on an outstanding warrant." It found that, here, "the overdetention had nothing to do with the sheriff's law enforcement function [because,] [i]n contrast to *Peters*, there is no dispute that Plaintiffs were entitled to be released." Rather, "the sheriff's conduct at issue relates to a purely administrative function," and "where the Sheriff acts in a purely administrative manner such action is pursuant to their [sic] county, not state, authority." Thus, the district court held that the LASD was subject to 1983 liability for these actions.

The district court also addressed the LASD's claim that it was not a separately suable entity. Relying on our decisions in *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 624 n.2 (9th Cir. 1988), and *Shaw v. California Dep't of Alcoholic Beverage Control*, 788 F.2d 600, 604-05 (9th Cir. 1986), the district court ruled that the LASD is a

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[6] The district court granted the County's motions, in part, dismissing the various plaintiffs' Fourteenth Amendment claims in each action. In the sixth case, *Gladney*, the district court reserved ruling pending arguments on several other motions.

separately suable entity. It also rejected the LASD's argument that "the amendment of Cal. Evid. Code § 669.1 in some way modified the definition of a 'public entity.' " The court reasoned, "§ 669.1 is only intended to be an evidentiary limitation for cases involving public employees, and is not intended to redefine a 'public entity.' "

Relying on these same reasons recited in its second tentative ruling, the district court denied in part, and granted in part, the County's motion for summary judgment dismissal of the section 1983 claims in the one action in which it did not file a motion to dismiss.[7] The district court also used this tentative ruling to deny the County's remaining motion to dismiss. Specifically, the district court found that "the sheriffs were not state actors, but they were acting on behalf of the County in the instant cases." Therefore, it concluded that the County was answerable under section 1983 for the challenged overdetentions.

On May 25, 1999, the district court certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b) all but one of its orders denying the County's and the LASD's motions to dismiss.[8] On July 26, 1999, we granted the

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[7] The district court also ruled upon the County's arguments regarding proximate cause, negligence, Thirteenth Amendment claims, and the application of the Prison Litigation Reform Act. These issues are not before us on this appeal.

[8] Because the district court had reserved its ruling in *Gladney*, the sixth and final action, pending the outcome of other motions, the case was not eligible for certification as part of the consolidated interlocutory appeal.

County and the LASD permission to appeal these certified interlocutory orders. The County and the LASD also timely filed notices of appeal in each of these cases and those not certified on interlocutory appeal on the basis that the district court's orders are immediately appealable under the collateral order doctrine.

II. JURISDICTION

Because we have granted the County and the LASD permission to appeal those orders that the district court certified for interlocutory appeal, we have jurisdiction under 28 U.S.C. § 1292(b) to review any issue fairly included within the certified orders. *See Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, 205 (1996) ("As the text of § 1292 indicates, appellate jurisdiction applies to the order certified to the court of appeals, and is not tied to the particular question formulated by the district court."). Thus, we have jurisdiction pursuant to 28 U.S.C. § 1292(b) to review appeals Nos. 99-55897, 99-55898, 99-55899, 99-56041, and 99-56233.[9]

Section 1292(b), however, does not provide the jurisdictional basis for our review of all the appeals now before us. Appeal No. 99-56310 (the County's and the LASD's appeals from the district court's denials of their motions to dismiss in *Gladney v. County of Los Angeles, et al.*, No. CV-99-00586-WJR) and No. 99-56766 (the

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[9] Appeal No. 99-56233, *White, et al., v. Block, et al.*, is the County and LASD's consolidated interlocutory appeal itself. Although the cases are listed individually as well, the interlocutory appeal is included separately to indicate its certification for our review.

County's appeal from the district court's denial of its motion for summary judgment in *Williams v. Block, et al.*, No. CV-97-3826-WJR) have been neither certified by the district court nor approved for interlocutory appeal by this court. Nevertheless, we conclude that we have jurisdiction over these appeals under the collateral order doctrine and the doctrine of pendent appellate jurisdiction.

In *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949), the Supreme Court established the collateral order doctrine, holding that a district court order that "did not make any step toward final disposition of the merits of the case and will not be merged in final judgment" is appealable as "a final disposition of a claimed right which is not an ingredient of the cause of action and does not require consideration with it." *Id.* at 544-45. In subsequent cases, the Court has upheld a circuit court's use of the collateral order doctrine to entertain jurisdiction over appeals from the denial of a summary judgment motion that raised a qualified immunity defense. *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 143 (1993) (holding "that orders denying individual officials' claims of absolute and qualified immunity are among those that fall within the ambit of *Cohen*"); *Mitchell v. Forsyth*, 472 U.S. 511, 527 (1985) (finding that "[t]he denial of a defendant's motion for dismissal or summary judgment on the grounds of qualified immunity easily meets [the] requirements [of a collateral order]"); *id.* at 530 ("[A] district court's denial of a claim of qualified immunity, to the extent it turns on an issue of law, is an appealable 'final decision' within the meaning of 28 U.S.C. § 1291 notwithstanding the absence of a final judgment."). By direct application of this doctrine, we

have jurisdiction in appeal No. 99-56310, regarding the LASD's appeal of the district court's order holding it potentially liable as a County actor and not immune from suit in federal court under Federal Rule of Civil Procedure 17(b).

We also conclude that we have jurisdiction over all aspects of appeal No. 99-56310 and No. 99-56766 under the doctrine of pendent appellate jurisdiction. In *Swint v. Chambers County Comm'n*, 514 U.S. 35 (1995), the Supreme Court suggested that district court decisions that are "inextricably intertwined" may be appropriate for joint review under the doctrine of pendent party appellate jurisdiction. *Id.* at 50-51. Acting in accordance with *Swint*, a panel of this court in *Huskey v. City of San Jose*, 204 F.3d 893, 904-05 (9th Cir. 2000), recently applied pendent appellate jurisdiction to review two orders denying summary judgment with jurisdictional facts similar to those present here. In *Huskey*, a former deputy city attorney sued the City of San Jose and the individual heads of the City Attorney's office under 42 U.S.C. § 1983, seeking damages for wrongful termination and various other torts. The district court denied the City of San Jose and individual defendants' motions for summary judgment, which claimed a qualified immunity defense. The individuals appealed the denial of summary judgment and we granted review. *Id.* at 898-902. We further found that the order denying the City of San Jose's claim to summary judgment was inextricably intertwined with an order denying the individual's summary judgment motion and therefore employed pendent jurisdiction to hear the City's appeal. *Id.* at 902-06. The same procedural and jurisdictional situation exists here.

Accordingly, because the district court's orders denying the motions to dismiss in appeal No. 99-56310 and denying the motion for summary judgment in appeal No. 99-56766 raise the same issues, use the same legal reasoning, and reach the same conclusions as the earlier orders over which we have jurisdiction under section 1292(b), we find that appeals Nos. 99 56310 and 99-56766 are "inextricably intertwined" with the earlier orders. It is therefore proper exercise of our pendent appellate jurisdiction to review these appeals.

Having determined that we have jurisdiction, we turn now to a de novo review of the merits of the County's and the LASD's appeals.

III. DISCUSSION

A. *County Liability*

The question of the County's liability for the alleged constitutional torts of the LASD is governed by the analytical framework set out in *McMillian v. Monroe County*, 520 U.S. 781 (1997). In *McMillian*, Alabama's Monroe County, like the County here, was sued for allegedly unconstitutional actions undertaken by the Monroe County Sheriff. A county is subject to section 1983 liability for such suits if its policies, whether set by the government's lawmakers "or by those whose edicts or acts that may fairly be said to represent official policy," caused the particular constitutional violation at issue. *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 694 (1978). Here, as in *McMillian*, the parties agree that the Sheriff is the policymaker whose actions are to be examined; they "sharply disagree" about whether the

Sheriff is a policymaker on behalf of the State, in which case no section 1983 action lies because the Sheriff would not be a "person" within the meaning of the statute, or on behalf of the County.

The Supreme Court in *McMillian* offered two principles which guide us in resolving this question. First, it cautioned against employing a "categorical, all or nothing" approach. *Id.* at 785. Rather, we are to inquire "whether governmental officials are final policymakers for the local government in a particular area or on a particular issue." *Id.* Second, although the question of municipal liability under section 1983 is one of federal law, "our inquiry is dependent on an analysis of state law." *Id.* at 786. That is, "our understanding of the actual function of a governmental official, in a particular area, will necessarily be dependent on the definition of the official's functions under relevant state law." *Id.* at 786.

The appellants erroneously urge that *only* state law controls this appeal. In particular, the appellants rely almost exclusively on *County of Los Angeles v. Superior Court (Peters)*, 80 Cal. Rptr. 2d 860 (Ct. App. 1998), as the controlling authority.[10] Although we must consider the state's legal characterization of the government entities which are parties to these actions, federal law provides the rule of decision in section 1983 actions. *See Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 430 n.5 (1997) (finding that "the question whether a particular state agency has the same kind of independent status as a

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[10] As will be discussed below, we note here that *Peters* is factually distinguishable from the cases before us and therefore would not "control" our decision in any event.

county . . . is a question of federal law . . . [b]ut that federal question can be answered only after considering the provisions of state law that define the agency's character."); *City of St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988) (noting that "the identification of policymaking officials is a question of state law"). And, although it may be instructive on questions of liability in certain specific contexts, state law does not control our interpretation of a federal statute. To trigger section 1983 liability, plaintiffs must claim that their "rights, privileges, or immunities secured by the Constitution and [federal] laws" have been violated under the color of state law or action. 42 U.S.C. § 1983. "The elements of, and the defenses to, a federal cause of action are defined by federal law." *Howlett v. Rose*, 496 U.S. 356, 375 (1990). Therefore, federal courts have generally recognized the primary importance of federal law in section 1983 litigation. *See Howlett*, 496 U.S. at 376; *Monell*, 436 U.S. 658; *Tiemann v. Tul-Center, Inc.*, 18 F.3d 851 (10th Cir. 1994); *Larez v. Holcomb*, 16 F.3d 1513, 1520 (9th Cir. 1994). Recognizing the appropriate deference to state law in the context of section 1983, the *McMillian* Court closely examined the Alabama Constitution, Code and case law, finding critical to its decision that the Alabama Supreme Court had interpreted various of the relevant provisions and their historical background as evidence of " 'the framer's intent to ensure that sheriffs be considered executive officials of the state.' " *Id.* at 789 (citations omitted). After its detailed analysis of Alabama's governmental structure and allocation of powers and duties among its institutions, the Court concluded that "Alabama sheriffs, when executing their law enforcement duties, represent the State of Alabama, not their

counties." *Id.* at 793. The Court, however, rejected a "uniform, national characterization of all sheriffs," because "such a blunderbuss approach would ignore a crucial axiom of our government: the States have wide authority to set up their state and local governments as they wish." *Id.* at 795. Justice Ginsburg, in dissent, nevertheless emphasized the limited scope of *McMillian*'s holding through its "Alabama-specific approach" and its admonition to examine the particular function at issue in a given case. *Id.* at 804 (Ginsburg, J. dissenting). As Justice Ginsburg noted, the majority opinion did not question that a sheriff might be a county policymaker for some purposes and in some states. *Id.*

In the cases before us, the district court found that the function in question was the effectuation of the release of persons where it is clear that there is no legal cause for their continued detention; and that in that function, the LASD acts pursuant to county, not state authority. The function as described by the district court may be overly narrow. However, even if we view the function more broadly as the oversight and management of the local jail, we are compelled to agree with the district court that the Sheriff acts for the County in this management function. This conclusion is based on our own independent analysis of California's constitution, statutes, and case law. *Weiner v. San Diego County*, 210 F.3d 1025, 1029 (9th Cir. 2000) (noting that a reviewing court must "examine California's constitution, statutes, and case law" when determining a county's liability under *McMillian*).

Unlike the Alabama Constitution,[11] the California Constitution does not list sheriffs as part of "the state 'executive department.' " *McMillian*, 520 U.S. at 787 (finding this designation "especially important" for determining liability). Instead, Article XI, section 1(b) of the California Constitution designates sheriffs as county officers. Cal. Const. art. XI, § 1(b) ("The Legislature shall provide for . . . an elected county sheriff. . . . "); *see also DeGenova*, 209 F.3d 973, 976 (7th Cir. 2000) (noting that the Illinois Constitution's designation of sheriffs as county officers "strongly indicates that the Sheriff is an agent for the county, and not the State"). Indeed, "[n]ot only does the California Constitution lack the provisions most important to the Supreme Court's decision in *McMillian*, its provisions read much like those of the Alabama Constitution prior to that State's determined effort to clarify that sheriffs were acting for the State when exercising their law enforcement functions." *Roe v. County of Lake*, 107 F.Supp.2d 1146, 1149 (N.D. Cal. 2000); *see McMillian*, 520 U.S. at 788. Thus, under the California Constitution, the LASD is generally a county, not state, agency. Even more critical to our analysis, there is no provision in the

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[11] Historically, Alabama county sheriffs were squarely placed under state control to stop them from assisting lynch mobs in killing black prisoners. *McMillian*, 520 U.S. at 788. No such history has forced California to take control of its county sheriffs through its state constitution. In fact, quite the opposite has been true in California. In 1970, the California legislature deleted constitutional provisions that gave it the authority to define the sheriffs' duties, devolving control from the state to the counties. *See Beck v. County of Santa Clara*, 204 Cal.App.3d 789, 796 (Cal. 1988).

California Constitution that states that the LASD acts for the state when managing the local jails.

The California Government Code also supports the conclusion that the LASD operates for the County when administering local prison policy. Although the California Attorney General, like the Alabama Attorney General in *McMillian*, has statutory control over the sheriffs in a law enforcement capacity, in California, the counties hold the ultimate power over the jails. *Compare* Cal. Gov. Code § 12560 (granting the Attorney General power over the sheriffs' activities relevant to the "investigation or detection of crime"), *with* Cal. Gov. Code § 25303 (granting the county boards of supervisors broad fiscal and administrative powers for the management of the individual county jails so long as the boards do not "obstruct the investigative function of the sheriff of the county"). The counties retain the power to transfer control of a county jail from the sheriff to a county-created department of corrections, suggesting that the counties actually control and operate the jails, and not the state via the sheriffs. Cal. Gov. Code § 23013; *Beck v. County of Santa Clara*, 204 Cal. App. 3d 789, 793 (1988). We find that sections 23013 and 25303 weigh heavily in favor of our conclusion that the LASD's jail-release policies are a county function and a county concern. *See Dotson v. Chester*, 937 F.2d 920, 928 (4th Cir. 1991) (interpreting a Maryland statute virtually identical to section 23013 and concluding that because "state statutes confer authority on the counties to transfer control of the jail from the sheriff to a county warden," it has "no doubt but that sheriffs are final policymakers *for counties* when operating jails" (emphasis added)). Thus, under these state statutes, the County, not the state, oversees the

local jails, and the LASD, as the administrator of those jails, acts for the County.

Other provisions in the California Government Code further support the County's liability for the LASD's actions. Under California law, monetary damages for section 1983 claims are paid by the County and not the state. Cal. Gov. Code § 815.2. This crucial factor weighs heavily toward finding that, in the cases at hand, the LASD functions as a county, rather than a state, agency. *See McMillian*, 520 U.S. at 789 (stating that it was "critical[ ] for our case" and "strong evidence in favor of the . . . conclusion that sheriffs act on behalf of the State" that a judgment against the sheriff would be a suit against the state, and that the county would not be liable for a sheriff's acts under respondeat superior). In California, sheriffs are elected county officers. *See* Cal. Gov. Code § 24000(b) (providing that a sheriff be included as one of the county officers); Cal. Elec. Code § 314 (defining a "county officer" as "any elected officer enumerated in . . . Section 24000 . . . of the Government Code."). Sheriffs are required to have their offices at the county seat with the other county officers, Cal. Gov. Code § 24250; their vacancies are filled as "provided by law for filling elective county offices;"[12] Cal. Gov. Code § 24205; and their services are contracted out by the counties – not the state. *See* Cal. Gov. Code § 53069.8; *see also* County of Los Angeles Charter §§ 56, 56, 56. These various state

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[12] In the County of Los Angeles, the Los Angeles County Board of Supervisors appoints an interim sheriff to hold office until the next countywide election. County of Los Angeles Charter § 16.

provisions lead inexorably to the conclusion that the LASD is tied to the County in its political, administrative, and fiscal capacities. Therefore, the County appears subject to liability for the LASD's actions.

Even the Los Angeles County Code supports the conclusion that the LASD's connection to the County subjects the County to potential liability. The LASD is an agency established and governed by the Los Angeles County Code. *See* Los Angeles County Code, ch. 2.34. The Los Angeles County Sheriff is an elected position that is established by the Los Angeles County Charter. *See* Los Angeles County Charter, art. IV, sec. 12. The Los Angeles County Board of Supervisors retains budgetary oversight and control over the LASD. *See* Los Angeles County Code, subch. 4.12.030. Like all other county agencies, the LASD submits budget requests to the LASD each fiscal year. *See* Los Angeles County Code, subch. 4.12.070. Whether under state or local law, the County appears liable for the LASD's actions.

Finally, in reviewing the relevant case law, we find equally compelling evidence to hold the County liable for the LASD's conduct in administering the AJIS checks. Of particular importance to our analysis is *Sullivan v. County of Los Angeles*, 12 Cal.3d 710, 717 (1974). In *Sullivan*, the California Supreme Court held that the County was liable for the Sheriff's failure to release a prisoner who had served a completed sentence. Jack Sullivan was to be released from a 50-day drunk driving sentence after a Los Angeles Superior Court issued an order dismissing the charges against Sullivan. *Id.* at 714. Because the Superior Court neglected to file an order for his release, Sullivan remained in jail and served his full sentence. *Id.* Due to

the administrative error relating to the previously unfiled release order, no order was issued to release Sullivan upon completion of his full sentence either. *Id.* Sullivan was finally released twelve days after his sentence ended and nearly a month after his early release date. *Id.* at 715. The California Supreme Court held that the Sheriff's failure to release Sullivan resulted in his false imprisonment, and therefore held the County liable for damages. *Id.* at 716-17. The *Sullivan* court reasoned that "when the jail term has expired; in the eyes of the law [the] plaintiff is no longer a 'prisoner.' " *Id.* at 717. This holding is applicable to the cases at hand.

Other cases further support holding the County responsible under section 1983 for the LASD's actions. In *Beck v. County of Santa Clara,* 204 Cal.App.3d 789 (Ct. App. 1988), the California Court of Appeals upheld the County of Santa Clara's exercise of authority over its local jails, when it chose to transfer the management of the jails from the county sheriff to a newly created County Department of Detention. *Id.* at 792-93. The Court of Appeals found that although sheriffs derive their powers from the state in part, the control over the local prisons is within the authority of the individual counties. *Id.* at 795-805. A recent case from the Northern District of California, *Roe v. County of Lake,* 107 F.Supp.2d 1146 (N.D. Cal. 2000), is also instructive. In a well-reasoned opinion analyzing *McMillian*'s application to a section 1983 action against a local county sheriff and the county in which he was elected, the district court found that in the setting of policies and administration of his office, the sheriff was the County's chief policymaker. We agree with the district court's reasoning that:

> Recognizing that local police power is derived from the State, *McMillian* requires a court to analyze the delegation of that power to determine whether it was sufficiently complete such that a suit for abuse of that power is not a suit against the State. It seems clear . . . that California's delegation of authority to [the] Sheriff [here] is sufficiently complete. It is difficult to see how a judgment against a sheriff who, as is alleged here, permits his office to violate the civil rights of women in the way he maintains his staff and sets his policies, will operate as a judgment against the state.

Id. at 1151 (citations omitted).

The County does not counter with any arguments predicated on an analysis of the California Constitution, codes, or regulations; nor does it urge upon us contrary provisions in its charter or regulations. Rather than conducting an independent analysis of California law, the County urges us simply to adopt the holding of *County of Los Angeles v. Superior Court (Peters)*, 80 Cal. Rptr. 2d 860 (Ct. App. 1998), in which the California Court of Appeal found that the LASD was a state actor and therefore immune from liability under 42 U.S.C. 1983. Peters sued the LASD and the County because the LASD held her for ten days after she had posted bail. The LASD overdetained Peters based on a facially-valid outstanding arrest warrant that was subsequently found to have been issued for another person. Peters claimed the LASD reasonably should have known the warrant did not apply to her and sought damages under section 1983.

The California Court of Appeal concluded that "in setting the policies governing the release of prisoners

from the Los Angeles County jail, the Los Angeles County Sheriff acts as a state official rather than a policymaking official for the County of Los Angeles." *Id.* at 861 (citing *Pitts v. County of Kern*, 17 Cal.4th 340 (1998)).[13] Relying on *Pitts* and *McMillian*, the *Peters* court examined the relevant sections of the California Government Code and state case law in reaching its conclusion. The County argues that *Peters* is analogous to the cases on appeal and therefore controls our analysis. We disagree.

Although the general issue of overdetention was presented in both *Peters* and the cases at hand, the factual scenarios are quite distinct. In *Peters*, the LASD acted upon a facially-valid warrant in its detention of the plaintiff, where as here, in conducting AJIS checks, the LASD is conducting its own administrative search for outstanding warrants, wants, or holds upon which it would be required to act, if they existed. Although this distinction

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[13] In *Pitts*, the California Supreme Court applied *McMillian* to determine "whether for the purposes of local government damages liability, a California district attorney acts on behalf of the state or the county when preparing to prosecute and while prosecuting criminal violations of state law, and when establishing policy and training employees in these areas." *Pitts*, 17 Cal.4th at 345. The *Pitts* court held that "a district attorney acts on behalf of the state when training personnel for and developing policy regarding the preparation for prosecution and prosecution of criminal violations of state law," and therefore found the district attorney was not a suable person under section 1983. *Id.* at 366. Although *Pitts* provides some insight into California's application of *McMillian*, we note that the differences between the duties and activities of district attorneys and sheriffs are too great to allow *Pitts* to influence our decision in the cases on appeal, especially in light of the requisite case-by-case analysis demanded by *McMillian*.

may be perceived as subtle, for purposes of our analysis, it is critical. Acting upon a warrant is a law enforcement function with which the LASD is tasked under California state law. *See* Cal. Gov. Code § 12560. Searching for wants and holds that may or may not have been issued for persons whom the state has no legal right to detain is an administrative function of jail operations for which the LASD answers to the County. *See* Cal. Gov. Code §§ 25303, 26605. Whether or not the policy and practice of detaining persons beyond their term of incarceration for this administrative function violates the Constitution will be a question for the trial court.

Moreover, even if the case were on all fours we would not be bound by *Peters*'s conclusion regarding section 1983 liability because such questions implicate federal, not state, law. *See Owen v. City of Independence*, 445 U.S. 622, 647 n.30 (1980); *Weiner*, 210 F.3d at 1029. Although we have never before addressed the question we resolve today, we note that our holding comports with the many cases in which we have assumed California sheriffs to be county policymakers for section 1983 purposes.[14]

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[14] Again, in *County of Lake*, the district court exhaustively compiled a list of cases in which "the Ninth Circuit has considered a California sheriff a local law enforcement agent for purposes of establishing section 1983 liability under *Monell*." *County of Lake*, 107 F.Supp.2d at 1148; *see Id.* at 1148 n.4. They include cases holding California sheriffs liable as local agents decided both before and after *McMillian*. *See, e.g., Headwaters Forest Def. v. County of Humboldt*, 211 F.3d 1121, 1126 n.2 (9th Cir. 2000); *LaLonde v. County of Riverside*, 204 F.3d 947, 961 (9th Cir. 2000); *Henry v. County of Shasta*, 132 F.3d 512, 517-23 (9th Cir. 1997); *Navarro v. Block*, 72 F.3d 712, 714-15 (9th Cir. 1995);

Under *Monell*, the County would be liable for section 1983 damages "[i]f the sheriff's actions constitute county 'policy.' " *McMillian*, 520 U.S. at 783 (citing *Monell*, 436 U.S. at 694). Upon examining the precise function at issue in conjunction with the state constitution, codes, and case law, we conclude that the LASD acts as the final policy-maker for the county when administering the County's release policy and not in its state law enforcement capacity. We therefore affirm the district court's holding that the LASD, when functioning as the administrator of the local jail, is a County actor, and that the County may therefore be subject to liability under 42 U.S.C. § 1983.

B. *LASD Liability*

1. *Suable Entity*

The LASD also argues that it is not separately suable in federal court under Federal Rule of Civil Procedure 17(b). In support of its argument, the LASD cites *Garcia v. County of Los Angeles*, 588 F.Supp. 700 (C.D. Cal. 1984), in which the LASD was found to be a non-separately suable entity. In the cases at hand, the district court recognized that in a more recent opinion, *Shaw v. California Dep't of Alcoholic Beverage Control*, 788 F.2d 600, 605 (9th Cir. 1986), we found a police department to be a separately suable entity and therefore declined to apply *Garcia* in favor of *Shaw*. As we pointed out in *Shaw*,

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Hallstrom v. City of Garden City, 991 F.2d 1473, 1481-82 (9th Cir. 1993); *Redman v. County of San Diego*, 942 F.2d 1435, 1447 (9th Cir. 1991); *Merritt v. County of Los Angeles*, 875 F.2d 765, 770-71 (9th Cir. 1989).

> Under Rule 17(b) of the Federal Rules of Civil Procedure, the Police Department's capacity to be sued in federal court is to be determined by the law of California. Section 945 of the California Government Code provides that "[a] public entity may sue or be sued." Section 811.2 of the Government Code defines a "public entity to include 'the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or political corporation in the State.' "

Id. at 604.

Relying on California court decisions that "held that a police department is a public entity under section 200 of the California Evidence Code," we then concluded that "the courts of California would hold that the Police Department is a public entity under section 811.2." *Shaw*, at 604; *see also Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 624 n.2 (9th Cir. 1988) ("Municipal police departments are 'public entities' under California law and, hence, can be sued in federal court for alleged civil rights violations."). Thus, under Rule 17(b) a Police Department may be sued in Federal Court. *Shaw*, at 605.

Although the appeals before us, unlike *Shaw* and *Karim-Panahi*, confront the suability of a *sheriff's* department rather than a *police* department, the LASD does not contend that *Shaw* and *Karim-Panahi* are distinguishable on this ground, and we see no basis for such a distinction. Indeed, in reaching our decision in *Shaw*, we rejected the holding of *Garcia*, in which "the district court held that the Los Angeles County Sheriff's Department was not a 'public entity' under § 811.2." *Shaw*, 788 F.2d at 604; *see*

also Jackson v. Alameda County Sheriff's Dep't, No. C-92-4419-BAC, 1993 WL 174896, at *4 (N.D. Cal. May 14, 1993) (reading *Shaw* to hold that sheriff's departments are separately suable public entities under California law).

The LASD also argues that *Shaw* was subsequently undermined by a change in the California Evidence Code provision on which it relied. However, our decision in *Karim-Panahi*, a progeny of *Shaw*, was rendered after the Evidence Code section to which the LASD points, section 669.1, was added. *See* Cal. Evid. Code § 669.1 historical and statutory notes (West 1995). Therefore, even if the LASD's argument were availing, *Karim-Panahi* would nevertheless control our decision. *See Visness v. Contra Costa County (In re Visness)*, 57 F.3d 775, 778 (9th Cir. 1995) (stating that to the extent a prior panel's decision "rests on state law, a *change* in California statutory and common law . . . would permit" a subsequent panel "to reconsider the issues decided by" the prior panel (emphasis added)); *Jones-Hamilton v. Beazer Materials & Servs.*, 973 F.2d 688, 696 n.4 (9th Cir. 1992) (noting that a prior panel's "interpretation of California law is 'binding in the absence of any *subsequent* indication from the California courts that our interpretation was incorrect' " (emphasis added) (quoting *Owen v. United States*, 713 F.2d 1461, 1464 (9th Cir. 1983)).

Moreover, section 669.1 does not purport to alter the meaning of "public entity," to have any impact on the Evidence Code section on which the *Shaw* Court actually relied (section 200), or to affect section 811.2 of the Government Code. *See* Cal. Evid. Code § 669.1. Thus, even if we were to entertain the LASD's argument, we would reject it. The California legislature's enactment of section

669.1 "does not provide the kind of indication that our past interpretation of California law was incorrect that would cause us to revisit our holding in [*Shaw*]." *Jones-Hamilton*, 973 F.2d at 696 n.4.

Accordingly, we agree with the district court and conclude that under *Shaw* and *Karim-Panahi*, the LASD is a separately suable entity.

2. *Arm of the State Doctrine*

The LASD further argues that even if we find that it is a separately suable entity, it is entitled to Eleventh Amendment immunity under the "arm of the state" doctrine. *See Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997); *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70 (1989). Agencies of the state are generally immune from private damage actions brought in federal court. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984). The LASD contends that as an arm of the state, it is not a "person" within the meaning of section 1983 and, therefore, can not [sic] be held liable for the overdetentions.

The district court did not formally engage in an arm of the state analysis, instead relying upon the reasoning set forth in an unpublished memorandum and order from the Northern District of California. There, the court, using a somewhat informal arm of the state analysis itself, concluded that the Alameda County Sheriff was not an arm of the state because it was acting in an administrative capacity for the county. Upon consideration of the appropriate factors, however, we agree with the district

court's conclusion that the LASD is not an arm of the state and therefore does not enjoy Eleventh Amendment immunity.

In determining whether an entity is an arm of the state we inquire whether " 'the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials [or state entities] are nominal defendants.' " *Durning v. Citibank*, 950 F.2d 1419, 1423 (9th Cir. 1991) (alteration in original) (quoting *Ford Motor Co. v. Dep't of Treasury*, 323 U.S. 459, 464 (1945)). This is a question of federal law, which "can be answered only after considering the provisions of state law that define the agency's character." *Regents of the Univ. of Cal. v. Doe*, 519 U.S. 425, 429 n.5 (1997).

We consider five factors when determining whether a governmental agency is an arm of the state:

> [1] whether a money judgment would be satisfied out of state funds, [2] whether the entity performs central governmental functions, [3] whether the entity may sue or be sued, [4] whether the entity has the power to take property in its own name or only the name of the state, and [5] the corporate status of the entity.

Durning, 950 F.2d at 1423 (quoting *Mitchell v. Los Angeles Cmty Coll. Dist.*, 861 F.2d 198, 201 (9th Cir. 1988) (citations omitted)).

We are satisfied that the LASD is not acting as an arm of the state when administering the local county jails. First, the County, not the state, is financially liable for the LASD's actions in its capacity as the administrator of the

local jails. Cal. Gov. Code § 815.2. As established in *Sullivan v. County of Los Angeles*, 12 Cal.3d 710, 717 (1974), the County is liable specifically for the LASD's overdetention of individuals who have served a completed prison sentence – the very actions at issue here. *Id.* at 716-17. This factor, which weighs against the LASD's position, is the most important factor in identifying an arm of the state. *Durning*, 950 F.2d at 1424; *Jackson v. Hayakawa*, 682 F.2d 1344, 1350 (9th Cir. 1982); *Ronwin v. Shapiro*, 657 F.2d 1071, 1073 (9th Cir. 1981); *see also Hess v. Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 49 (1994) (noting that, in determining whether an entity is an arm of the state, "the vast majority of Circuits . . . have concluded that the state treasury factor is the most important factor to be considered . . . and, in practice, have generally accorded this factor dispositive weight" (omission in original) (internal quotation marks omitted)); *cf. Edelman v. Jordan*, 415 U.S. 651 (1974) (holding that the Eleventh Amendment precludes federal courts from adjudicating suits where judgments against the state would be paid with state funds).

Second, conducting the AJIS checks is not a central government function, but the administration of a County policy. Put differently, the LASD does not act in a law enforcement capacity when administering the County's jail release policy. The sheriffs have exclusive responsibility for running the county jails. Cal. Gov. Code § 26605. But the counties retain the ultimate authority over the local jails through their fiscal and administrative oversight. Cal. Gov. Code §§ 23013, 25303. These laws establish that the relationship regarding the administration of the prisons system is between the counties and the

sheriffs, not the state and the sheriffs. There are no provisions in the California Constitution or code that grant the state control over the prisons via the sheriffs. Thus, in the cases at hand, the LASD is not performing a central government function for the state when conducting the pre-release AJIS checks. Rather, it performs this function at the behest of the County. This conclusion also weighs against considering the LASD an arm of the state.

Third, we have found that the LASD is a separately suable entity. As discussed above, in accordance with our holdings in *Shaw v. California Dep't of Alcoholic Beverage Control*, 788 F.2d 600, 605 (9th Cir. 1986), and *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 624 n.2 (9th Cir. 1988), a local law enforcement agency can be considered a separably [sic] suable entity. This factor also weighs against the LASD's claim for immunity.

The record is bare with respect to the remaining two factors. We therefore find no factors weighing in favor of a finding that the LASD is an arm of the state, especially in view of our extensive analysis of the structure and relationships of the LASD in its operation of the County's jails. Accordingly, we hold that the LASD is not an arm of the state of California in its administration of the local county jails. Therefore, we conclude that the district court correctly rejected the LASD's claim of Eleventh Amendment immunity.

VI. CONCLUSION

For the foregoing reasons, the district court's orders denying the LASD's motions to dismiss and the County's motions to dismiss and for summary judgment are AFFIRMED.

APPENDIX B

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

VALERIE ANN STREIT, DIEGO SANTILLANA, and MICHAEL ROERICH individually, and as class representatives,

Plaintiffs,

vs.

COUNTY OF LOS ANGELES, a governmental entity; LOS ANGELES

Case No. 98-9575 WJR

ORDER ON MOTIONS TO DISMISS

FILED MAR 25, 1999

IT IS SO ORDERED
DATED 3-24-99
/s/ William J. Rea
UNITED STATES DISTRICT JUDGE

COUNTY SHERIFF'S DEPARTMENT; UNDERSHERIFF JERRY HARPER, ASSISTANT SHERIFF MICHAEL GRAHAM, CHIEF BARRY KING, CHIEF BOB PASH, COMMANDER DANIEL BURT, and DOES 1 through 10, individually,

Defendants.

The motion of defendant Los Angeles County to dismiss plaintiffs' first and second causes of action, all defendants' motion to dismiss plaintiffs' third and fifth causes of action, and defendant Los Angeles County Sheriff's Department's motion to dismiss plaintiffs' Complaint came on regularly for hearing on March 8, 1999, before the Honorable William J. Rea.

After full consideration of the pleadings, the authorities and exhibits and declarations submitted by counsel as well as counsels' oral arguments, the Court orders as follows:

1. Defendant Los Angeles County Sheriff's Department's motion to dismiss plaintiffs' Complaint is denied. Plaintiffs' "Doe" amendment substituting the Los Angeles Sheriff's Department was proper and Defendant Los Angeles County Sheriff's Department is a public entity under California law. The holding of *County of Los Angeles v. Superior Court (Peters)* 68 Cal. App. 4th 1166

(1998) (county sheriff acts as a state officer performing law enforcement duties in setting policies concerning release of persons from the county jail), is not controlling here. The *Peters* court did not find that the county sheriff acts pursuant to state authority in all of its duties. There is a distinction apparent between law enforcement duties and operational or administrative duties. In the instant case there is no dispute that plaintiffs were entitled to be released and, in contrast to *Peters*, their overdetention had nothing to do with the sheriff's law enforcement function. The sheriff's conduct here at issue relates to a purely administrative function: once the plaintiffs became entitled to their releases, the sheriff had a duty to effectuate their releases.

2. Defendant County of Los Angeles' motion to dismiss plaintiffs' first and second causes of action relating to *Monell* liability is denied. Contrary to defendant County's allegations, the sheriff and sheriff's deputies were not state actors in reference to their actions in this case. They were acting on behalf of the county in their local duty of daily oversight and management of the county jail.

3. All defendants' motion to dismiss plaintiffs' third cause of action relating to liability under Cal. Civ. Code § 52.1 is granted. Under applicable case law, invidious discrimination is an element of a Cal. Civ. Code § 52.1 claim and plaintiffs have not alleged any invidious discriminatory animus.

4. All defendants' motion to dismiss plaintiffs' fifth cause of action for negligence is denied. Defendants had a duty to release plaintiffs within a reasonable period of

time after the reason for their incarceration terminated. Defendants' decisions regarding the enforcement or institution of *some* means to effectuate releases within a reasonable time are not discretionary, and, therefore, defendants are not protected by Cal. Govt. Code § 820.2 providing statutory immunity for discretionary acts.

The Indicated Ruling on these issues is to be attached to this Order as Exhibit A.

IT IS SO ORDERED.

PRESENTED BY:

JOHN C. BURTON
Lead Counsel
LAW OFFICES OF JOHN BURTON

TIMOTHY MIDGLEY
MANES & WATSON

ROBERT MANN
DONALD W. COOK
ATTORNEYS AT LAW

MARY ANNA HENLEY
ATTORNEY AT LAW

Attorneys for Plaintiff

By /s/ Mary Anna Henley
Mary Anna Henley

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TENTATIVE RULING

Case Number: **Docket Number:** 2
CV-97-3826 WJR (Ex)
CV-98-9573 WJR (Ex)
CV-98-9574 WJR (Ex)
CV-98-9575 WJR (Ex)
CV-98-9695 WJR (Ex)

Title: Williams, et al. v. County of Los Angeles, et al.
Cleaves, et al. v. County of Los Angeles, et al.
Patchen, et al. v. County of Los Angeles, et al.
Streit, et al. v. County of Los Angeles, et al.
Shields v. County of Los Angeles, et al.

Date: Monday, March 8, 1999

Nature of Motion: (1) Defendant Los Angeles Sheriff's Department's Motion to Dismiss
(2) Defendants' Motion to Dismiss the First, Second, Third, and Fifth Causes of Action

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HON. WILLIAM J. REA, JUDGE

Marva Dillard, Deputy Clerk

TENTATIVE RULING[1]

The Court is inclined to DENY Defendant Los Angeles Sheriff's Department's Motion to Dismiss.

The Court is inclined to DENY Defendant County of Los Angeles' Motion to Dismiss the First and Second Causes of Action, and all Defendants' Motion to Dismiss the Fifth Cause of Action. However, the court is inclined to GRANT Defendants' Motion to Dismiss Plaintiffs' Third Cause of Action.

DISCUSSION

I. Defendant Los Angeles Sheriff's Department's Motion to Dismiss

A. Plaintiffs' "Doe" Amendments Were Proper

Defendant Los Angeles County Sheriff's Department ("LASD") first seeks to dismiss Plaintiffs' Complaints by alleging that Plaintiffs failed to follow proper procedure in substituting Defendant LASD as a "Doe" defendant. It is well-settled that there exists a one-year statute of limitations for naming and suing defendants in § 1983 actions brought in California. *See Cabrales v. County of Los Angeles*, 864 F.2d 1454, 1462 (9th Cir. 1988). In each of these related cases, Defendant LASD was added as a "Doe" defendant within one year following the incident that gave rise to the suit. Accordingly, the Court is

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[1] The Court recognizes that not all motions were brought in each of the related cases. Accordingly, the tentative ruling applies only to the cases in which the relevant motions were filed.

inclined to find that Plaintiffs' amendments naming Defendant LASD as a "Doe" defendant were proper.[2]

B. The LASD is Amenable to Suit

Defendant LASD next seeks to dismiss Plaintiffs' Complaints by alleging that the LASD is not amenable to suit. Defendant LASD's main argument as to why the LASD is a non-suable entity rests on the recent California Appellate Court decision in *County of Los Angeles v. Superior Court (Peters)*, 68 Cal. App. 4th 1166 (1998). There, the Court held that "in setting policies concerning release of persons from the Los Angles County jail, the Los Angeles County Sheriff acts as a state officer performing state law enforcement duties, and not as a policymaker on behalf of the County of Los Angeles," and as such, the County is

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[2] Defendant LASD's sole argument as to why Plaintiffs' "Doe" amendments were improper is derived from *Optical Surplus Inc. v. Superior Court*, 279 Cal. Rptr. 194 (1991). However, Defendant LASD's reliance on this case is misplaced. *Optical* involved a situation where the plaintiff attempted to amend the Complaint to add a "Doe" defendant *eighteen months* after the original complaint was filed despite clear evidence that the plaintiff knew of the defendant's identity and facts supporting the wrongdoing at the time the original complaint was filed. *See id.* at 780-84. Although not explicitly stated by the *Optical* court, the plaintiff was attempting to add the defendant as a party after the statute of limitations had run. *See id.* at 783-84. It is only in those situations – where the statute of limitations has run – that a plaintiff must show that the defendant's identity and the facts supporting allegations of wrongdoing were unknown. As stated above, Plaintiffs filed the "Doe" amendments within the statute of limitations. Accordingly, the Court should find Plaintiffs' amendments proper.

not liable under § 1983. *Id.* at 1178. Where the LASD is deemed to be a "state actor," the LASD is immune from liability under Eleventh Amendment principles.

In *Peters,* the plaintiff was overdetained because the sheriff believed there was an outstanding warrant for the plaintiff's arrest. In response to the plaintiff's argument that the sheriff's position in effectuating the release of prisoners was merely administrative, the Court stated that "[t]his attempt to characterize the sheriff's conduct was merely operational or administrative is not persuasive *on the facts of this case.* The function involved in this case is *determining whether to release a person who may be subject to arrest on an outstanding warrant. This is a law enforcement function.*" *Id.* at 1177 (emphasis added).

However, the *Peters* court does not specifically find that the sheriff acts pursuant to state authority in all of its duties. Rather, there appears to be a distinction between the sheriff's law enforcement duties and the sheriff's operational or administrative duties. To this end, the Court finds *Granville v. Plummer,* 1999 WL 66513 (N.D. Cal. Feb. 8, 1999), instructive.

In *Granville,* the plaintiff sued the County and various named defendants, alleging civil rights violations resulting from defendants' failure to provide the plaintiff with outdoor exercise, and access to the law library and legal materials. The plaintiff had been placed in a single cell in the infirmary due to kidney failure the plaintiff experienced during incarceration. The defendants allegedly ignored or refused to grant the plaintiff's multiple requests for outdoor exercise and various other access.

While referencing the same decisions the *Peters* court relied on, the *Granville* court distinguished its case as follows: "the sheriff's department and its personnel were not involved in their law enforcement duties of investigating and enforcing the state criminal laws. Instead, the defendants were engaged in their local duty of daily oversight and management of the county jail. . . . This duty of day-to-day operation of a county jail is different from the sheriff department's duty of law enforcement and preserving the peace. . . . This difference is essential in finding that the sheriff's department and its personnel were representing the county when they allegedly engaged in the violations that plaintiff contends." *Id.* at *6.

In the instant cases, the overdetention had nothing to do with the sheriff's law enforcement function. In contrast to *Peters*, there is no dispute that Plaintiffs were entitled to be released. Once the Plaintiffs were ordered to be released, the Sheriff had a duty to effectuate that order. Accordingly, the sheriff's conduct at issue relates to a purely administrative function.

As such, the Court is inclined to find, distinct from the *Peters* holding, that where the Sheriff acts in a purely administrative manner such action is pursuant to their county, not state, authority.[3]

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[3] The Court notes that assuming the tentative is adopted – thereby finding that the LASD acts pursuant to county, not state, authority, in effectuating the release of persons where it is clear there is no legal cause for their continued detention – it is possible that having LASD remain as a named defendant may be unnecessary and superfluous. Accordingly, the Court is

Defendant LASD alternatively argues that – assuming *Peters* does not bar suit against the Sheriff's Department – the LASD is not a "public entity" amenable to suit. In partial support of this argument, Defendant cites to *Garcia v. County of Los Angeles*, 588 F. Supp. 700 (C.D. Cal. 1984), which, Defendant admits, the Ninth Circuit failed to follow in *Shaw v. Cal. Dep't of Alcoholic Beverage Control*, 788 F.2d 600, 604-05 & n.1 (9th Cir. 1986). As such, *Garcia* no longer appears to be controlling law. Moreover, more recently, in *Jackson v. Alameda County Sheriff's Dep't*, 1993 WL 174896 (N.D. Cal. May 14, 1993), the Northern District Court of California stated, "Plaintiff has named the Alameda County Sheriff's Department as a defendant. The Sheriff's Department is a public entity for the purposes of service under California Law." *Id.* at *4 (citing *Shaw*, 788 F.2d 600; *Toscano v. Los Angeles County Sheriff's Dep't*, 155 Cal. Rptr. 146 (1979)).

Defendant LASD also contends that the amendment of Cal. Evid. Code § 669.1 in some way modified the definition of a "public entity." However, considering the above case law on point with this issue, the Court should not find Defendant LASD's interpretation of this amendment compelling. It appears, instead, that § 669.1 is only intended to be an evidentiary limitation for cases involving public employees, and is not intended to redefine a "public entity." Therefore, the Court should reject Defendant LASD's argument that the LASD is not a public entity.

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inclined to hear oral argument as to whether the LASD should be dismissed from this action.

Accordingly, the Court is inclined to deny Defendant LASD's Motion to Dismiss as Plaintiffs have properly amended their Complaints to add the LASD as a "Doe" defendant, and *Peters* does not bar suit against the LASD in this factual situation.

II. Defendants' Motion to Dismiss the First, Second, Third, and Fifth Causes of Action

A. First and Second Causes of Action (*Monell* liability)

The County of Los Angeles ("County") moves to dismiss Plaintiffs' First and Second Causes of Action under 42 U.S.C. § 1983. Defendant County argues, in reference to the activity in question, that the sheriffs were performing state law enforcement duties and therefore were acting on behalf of the State of California, not the County of Los Angeles. Therefore, Defendant County's argument here is predicated on a finding that the sheriffs were state actors with respect to their conduct in these cases.

However, as discussed in relation to the Sheriff's Department's Motion to Dismiss (*see supra* Part I), it appears that the sheriffs were not state actors, but they were acting on behalf of the County in the instant cases. Accordingly, the County's argument is without merit. Therefore, the Court should deny Defendant county's Motion to Dismiss the First and Second Causes of Action.

B. Third Cause of Action (Cal. Civ. Code § 52.1)

All Defendants move to dismiss Plaintiffs' Third Cause of Action, which alleges a violation of Cal. Civ. Code § 52.1, as Plaintiffs do not allege that their rights were violated in furtherance of some invidious discriminatory animus. Although § 52.1 does not state on its fact that invidious discrimination is an element of a claim under the statute, a California Appellate Court found that an allegation of such discrimination was necessary to state a claim under § 52.1. *See Boccato v. City of Hermosa Beach*, 29 Cal. App. 4th 1797, 1809 (1994).

Plaintiffs argue that the decision in *Boccato* does not affect all claims under § 52.1. However, the relevant language in *Boccato* was not tailored in any way and, accordingly, it appears to apply to all claims under § 52.1. Furthermore, several courts have read *Boccato* as imposing the broad requirement that all claims asserted under § 52.1 must include allegations of discriminatory animus. *See Dodd v. United States of America*, 1998 WL 355611, *2-*3 (9th Cir. June 15, 1998); *Nelson v. City of Irvine*, 143 F.3d 1196, 1206-07 (9th Cir. 1998); *Casabuela v. Browning-Ferris Industries*, 68 Cal. App. 4th 101, 111 (1998).

Plaintiffs essentially ask the Court to find that these cases decided subsequent to *Boccato*, are erroneous decisions in that they misinterpreted *Boccato*. However, Plaintiffs have not provided the Court with convincing evidence that the California Supreme Court would decide

the issue differently.[4] Furthermore, this Court is aware of authority from two separate California appellate courts, and two Ninth Circuit decisions interpreting *Boccato* that support Defendants' position on the matter. Accordingly, the Court is inclined to find that Plaintiffs' Third Cause of Action for a violation of Cal. Civ. code § 51.2 fails as a matter of law because it fails to allege any invidious discriminatory animus.

C. Fifth Cause of Action (Negligence)

All Defendants argue that Plaintiffs' Fifth Cause of Action for negligence must fail because (1) Defendants have no duty to treat Plaintiffs differently than other persons in custody merely because they are awaiting release, and (2) Defendants have statutory immunity from such liability.

1. Duty

While it is evident that "duty" is an element of a claim for negligence, Defendants argue that Plaintiffs must assert a mandatory statutory duty to proceed with their claim for negligence. However, it appears that the

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[4] Plaintiff argues that *Jones v. Kmart Corp.*, 17 Cal. 4th 329 (1998), demonstrates that allegations of a discriminatory motive are not necessary to state a claim under § 52.1. However, in *Jones*, the California Supreme Court does not address the issue at all. There, the California Supreme Court found that the plaintiff's claim lacked the requisite state action. The finding regarding state action was dispositive. Accordingly, it is unclear if there were any other problems with the plaintiff's claim.

law distinguishes between suits seeking liability against public entities and suits seeking liability against public employees.

Although a public entity is generally not directly liable for injuries resulting from an act or omission of the public entity, a public employee, or any other person, "where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge its duty." Cal. Govt. Code § 815.6; *see also* Cal. Govt. Code § 815. Accordingly, in order to state a claim for direct liability against the County of Los Angeles, the County must have a mandatory statutory duty. In contrast, public employees are generally subject to liability for injury caused by their acts or omissions to the same extent as a private person. *See* Cal. Govt. Code § 820(a).[5]

Notwithstanding the distinction regarding the source of the duty, it is evident that the public entities and the individual public employees involved in the instant cases had a duty to release Plaintiffs once their reason for incarceration terminated. *See* Cal. Pen Code. § 1384 ("If

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[5] Where a plaintiff asserts a valid claim against a public employee, the plaintiff may proceed against the public entity, such as the County and the Sheriff's Department in this case, based upon a theory of vicarious liability. *See* Cal. Govt. Code § 815.2(a).

the [court] directs that action to be dismissed, the defendant must, if in custody, be discharged therefrom."); Cal. Pen. Code § 1295 ("The defendant [upon posting bail] must be discharged from custody."); *Sullivan v. County of Los Angeles*, 12 Cal. 3d 710, 715-16 (1974); *Shakespeare v. City of Pasadena*, 230 Cal. App. 2d 375, 384 (1964).

Despite significant evidence demonstrating the requisite duty, Defendants appear to also argue that there was not duty that established how fast Defendants were to release Plaintiffs after their release orders were issued. However, it is logical to employ a standard of reasonableness here. Moreover, Cal. Govt. Code § 815.6 indicates that public entities must exercise "reasonable diligence" in discharging their mandatory statutory duties. Accordingly, Defendants have a duty to release individuals, such as Plaintiffs, within a reasonable period of time. Reasonableness will be an issue for the jury.

2. Statutory Immunity

Defendants also argue that Plaintiffs' claims for negligence are barred because Defendants are entitled to statutory immunity that is provided to public employees for discretionary acts. Specifically, Defendants argue that failing "to adopt or enforce policies and procedures" to ensure prompt release of individuals, such as Plaintiffs, is a discretionary action, such that it is barred under Cal. Govt. Code § 820.2. Therefore, for clarification, the issue to be decided is whether it was within the discretion of the individually named Defendants to determine whether they should have adopted or enforced policies and procedures to ensure that Plaintiffs, who were entitled to be

released, were released within a reasonable amount of time.

The case law confirms that determining whether certain activity is "discretionary" can be a difficult process that requires "delicate decisions." *See Johnson v. State of California*, 69 Cal. 2d 782, 794 (1968). In an attempt to guide future courts in determining what qualifies as protected "discretionary" activity as opposed to non-protected activity, the California Supreme Court in *Johnson* proposed an approach that distinguishes between "planning" decisions and "operational" decisions. *See id.* This approach has been relied upon in many cases since that time. *See, e.g., Caldwell v. Montoya*, 10 Cal. App. 4th 972, 981 (1995), *Taylor v. Buff*, 172 Cal. App. 3d 384, 389 (1985).

After a court has ordered the release of incarcerated individuals, a jailer's decision to release such individuals within a reasonable amount of time appears to be an operational decision rather than a planning decision. *See Martinez v. City of Los Angeles*, 141 F.3d 1373 (9th Cir. 1998) (finding that LAPD officers were not immune, under Cal. Govt. Code § 820.2, from plaintiff's negligence claim based on his prolonged detention); *Sullivan v. County of Los Angeles*, 12 Cal. 3d at 722 n.11 ("Release of a prisoner after dismissal of charges against him is non-discretionary since it is specifically mandated by Penal Code section 1384."[6]). Moreover, it appears that the custodians must effectuate the order of the court either by enforcing pre-existing release procedures or adopting

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[6] Although this quotation is dicta, it supports the rationale of this decision and is useful for that purpose.

release procedures if none are in place. To argue that Defendants had discretion to not effectuate the release of Plaintiffs within a reasonable period of time is contrary to law.

Defendants admit that an inmate must be released once a release order is issued. Accordingly, there must be a mechanism in place to release these individuals within a reasonable period of time. Plaintiffs are not attacking a specific logistical aspect of their release. Rather, Plaintiffs are merely arguing that their release must be effectuated within a reasonable time and that Defendants were negligent with respect to this duty. While Defendants' decisions regarding the specific logistics of releases may be within their discretion, Defendants' decisions regarding the enforcement or institution of some means to effectuate releases within a reasonable time are not discretionary. Accordingly, the Court is inclined to deny Defendants' Motion to Dismiss the Fifth Cause of Action.

PROOF OF SERVICE BY MAIL

I am a resident of the county of Los Angeles; I am over the age of 18 and not a party to the within action; my business address is 35 South Raymond Ave., Suite 405, Pasadena, California, 91105.

On March 9, 1999, I served the within **[PROPOSED] ORDER ON MOTIONS TO DISMISS** on the interested parties herein by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at Pasadena, California addressed as follows:

David D. Lawrence
Franscell, Strickland, Roberts & Lawrence
225 South Lake Avenue, Penthouse
Pasadena, CA 91101-3005

Kevin C. Brazile
Principal Deputy County Counsel
County of Los Angeles
500 West Temple Street, Suite 648
Los Angeles, CA 90012

I declare under penalty of perjury that the above is true and correct.

Executed on March 9, 1999, at Pasadena, California.

/s/ Richard Thompson
Richard Thompson

APPENDIX C

DAVID D. LAWRENCE, State Bar No. 123039
SCOTT D. MacLATCHIE, Bar No. 115910
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Attorneys for Defendants COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT, SHERIFF SHERMAN BOCK, UNDERSHERIFF, JERRY HARPER, ASSISTANT SHERIFF MICHAEL GRAHAM, CHIEF BARRY KING, CHIEF BOB PASH and COMMANDER DANIEL BURT

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MUNIQUE WILLIAMS, et al. Plaintiffs, vs. SHERIFF SHERMAN BOCK, et al. Defendants.	Case No. CV 97-3826 WJR (Ex) Case No. CV 98-9574 WJR (Ex) Case No. CV 98-9695 WJR (Ex) Case No. CV 98-9575 WJR (Ex) Case No. CV 98-9573 WJR (Ex) **The Honorable William J. Rea** **[~~Proposed~~] ORDER CERTIFYING FOR APPEAL ORDERS ON MOTIONS TO DISMISS** **28 U.S.C. § 1292(b)** (Filed May 25, 1999)

LEELLEN PATCHEN, et al.
Plaintiffs,
vs.
COUNTY OF LOS ANGELES, et al.
Defendants.

EDDIE SHIELDS,
Plaintiff,
vs.
COUNTY OF LOS ANGELES, et al.
Defendants.

VALERIE ANN STREIT, et. al.,
Plaintiffs,
vs.
COUNTY OF LOS ANGELES, et. al.,
Defendants.

RANDALL CLEAVES, et al.,
Plaintiffs,
vs.
COUNTY OF LOS ANGELES, et. al.,
Defendants.

Defendants COUNTY OF LOS ANGELES and LOS ANGELES COUNTY SHERIFF'S DEPARTMENT's motion for an order to certify for appeal, pursuant to 28 U.S.C. § 1292(b), this court's orders denying Defendants' Motions to Dismiss in all of the above-captioned cases can came on regularly for hearing on May 3, 1999 before the Honorable William J. Rea.

After full consideration of the pleadings and argument, the Court orders that the motion is granted. The issue of whether the Sheriff acts pursuant to county or state authority in carrying out its administrative and operational responsibilities for the county jail presents a controlling issue of law to which there exists a substantial ground for difference of opinion. Further, interlocutory appeal to resolve this issue will likely materially advance the ultimate termination of litigation in these cases. Accordingly, the Court certifies the following issues to be addressed to the Ninth Circuit through interlocutory review:

(1) Is there a distinction between the Sheriff's law enforcement duties and its administrative or operational duties?

(2) If a distinction can be made, does the Sheriff act pursuant to county authority in carrying out its administrative or operational duties?

(3) Further, in effectuating the release of individuals who are entitled to be released, does the Sheriff act in its administrative or operational capacity and therefore pursuant to county, not state, authority?

The court's ruling on these matters is to be attached to this Order as Exhibit A.

IT IS SO ORDERED.

Dated: May 25, 1999 /s/ William J. Rea
William J. Rea,
United States District Judge

Presented by:

FRANSCELL, STRICKLAND,
ROBERTS & LAWRENCE

By /s/ Chandra Gehri Spencer
Chandra Gehri Spencer
Attorneys for Defendants

EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TENTATIVE RULING

Docket Number: 5

Case Number: Case No. CV 97-3826 WJR (Ex)
Case No. CV 98-9573 WJR (Ex)
Case No. CV 98-9574 WJR (Ex)
Case No. CV 98-9575 WJR (Ex)
Case No. CV 98-9695 WJR (Ex)

Title: Williams, et al. v. County of Los Angeles, et al.
Cleaves, et al. v. County of Los Angeles, et al.
Patchen, et al. v. County of Los Angeles, et al.
Valerie Streit, et al. v. County of Los Angeles, et al.
Eddie Shields v. County of Los Angeles, et al.

Date: Monday, May 3, 1999

Nature of Motion: Defendants' Motion for Order Certifying for Appeal Orders on Motions to Dismiss

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HON. WILLIAM J. REA, JUDGE

Marva Dillard, Deputy Clerk

TENTATIVE RULING

The Court is inclined to GRANT Defendants' motion for an order certifying for interlocutory appeal this Court's orders on the motions to dismiss.

DISCUSSION

On March 8, 1999, after hearing oral argument, the Court adopted its tentative ruling and denied Defendants' Motions to Dismiss.[1] Defendants now request that the Court certify the orders embodying the March 8, 1999 rulings so that they may seek an interlocutory appeal.

The March 8, 1999 rulings held that where the conduct at issue focuses on the sheriff's department's administrative duty to effectuate the release of individuals who are entitled to such release, the Sheriff acts pursuant to county authority and, therefore, Eleventh Amendment

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[1] The Court notes that both motions to dismiss were not brought in all of the related cases. Rather, the motion to dismiss brought by Defendant Los Angeles Sheriff's Department was not filed in the *Patchen* case. Likewise, Defendants' Motion to Dismiss the First, Second, Third, and Fifth Causes of Action was not filed in the *Williams* case.

immunity principles are not invoked. Defendants argue that the holding in *County of Los Angeles v. Superior Court (Peters)*, 68 Cal. App. 4th 1166 (1998), dictates that the Sheriff represents the State in its operation of the county jail, and, therefore, both the County and the Sheriff cannot be held liable pursuant to Eleventh Amendment immunity principles.

This Court, in denying Defendants' motions to dismiss, found that there is a distinction between the Sheriff's law enforcement duties and the Sheriff's operational or administrative duties.[2] This distinction is significant in relation to an Eleventh Amendment immunity analysis as it appears that where the sheriff's department is carrying out its law enforcement duties, the law indicates that it is acting on behalf of the State. Conversely, where the sheriff's department is carrying out its operational or administrative duties, it is acting on behalf of the County. This Court's factual distinction rests on a close reading of *Peters*, *Pitts v. County of Kern*, 17 Cal. 4th 340 (1998), *McMillian v. Monroe County, Ala.*, 520 U.S. 781 (1997), and *Granville v. Plummer*, No. C 97-3513, 1999 WL 66513 (N.D. Cal. Feb. 8, 1999).[3]

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[2] The Court's findings and rationale as to this point are fully developed in its tentative ruling issued on March 8, 1999. (See attached.)

[3] The Court notes that Judge Pfaelzer recently identified the same distinction in *Williams, et al. v. City of Los Angeles, et al.*, No. CV 97-6730 (C.D. Cal. Mar. 5, 1999). In that case, Judge Pfaelzer found that the sheriff's department's practice of searching inmates upon returning to the general jail population subsequent to a court appearance constituted conduct pursuant to the Sheriff's administrative function. Moreover, the court

I. Legal Standard Governing Certification for an Interlocutory Appeal

"It is the basic policy of the federal courts that appellate review should not be conducted until after entry of final judgment." *Nobell, Inc. v. Sharper Image Corp.*, 24 U.S.P.Q.2d 1919, 1925 (N.D. Cal. 1992) (citing *Coopers & Lybrand v. Livesay*, 98 S. Ct. 2454, 2461 (1978)). However, an exception to this general rule is provided for under 28 U.S.C. § 1292(b). Specifically, 28 U.S.C. § 1292(b) allows courts to certify orders for the purposes of an interlocutory appeal where the "order involves [1] a controlling question of law as to which there is [2] substantial ground for difference of opinion and [3] that an immediate appeal from the order may materially advance the ultimate termination of the litigation." 28 U.S.C. § 1292(b). The first and third factors are related as an issue is "controlling if resolution of the issue of appeal could materially affect the outcome of litigation in the district court." *Nobell*, 24 U.S.P.Q.2d at 1295 (quotations and citations omitted).

Since the federal courts have a strong policy of discouraging piecemeal litigation, it is well-settled that certifications for interlocutory appeals are to be ordered only in "exceptional cases." *See id.* Moreover, 28 U.S.C. § 1292(b) "was not intended merely to provide review of difficult rulings in hard cases." *United States Rubber Co. v. Wright*, 359 F.2d 784, 785 (9th Cir. 1996).

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found that the Eleventh Amendment was not invoked because when the Sheriff is engaged in administrative duties, it is acting pursuant to county authority.

II. Application to the Instant Cases

A. Controlling Question of Law

The issue of whether the sheriff's department represents the County or the State in carrying out its administrative duties, apart from its law enforcement duties, appears to be a controlling question of law. Specifically, "[a] question is 'controlling' if its incorrect disposition would require reversal of the final judgment." *Cardona v. General Motors Corp.*, 939 F. Supp. 351, 353 (D.N.J. 1996). If Eleventh Amendment immunity applies here, as Defendants allege, it would render all but the individual Defendants, in their individual capacities, immune from liability in this action.

Moreover, a determination as to whether the Eleventh Amendment would apply in these cases directly impacts this Court's subject matter jurisdiction to hear the claims asserted against the County, the Sheriff's Department, and the individual Defendants in their official capacities. Specifically, where Eleventh Amendment immunity applies, this Court lacks jurisdiction to entertain suits brought against state entities. Accordingly, the Court is inclined to find that the contested issue presents a controlling question of law.

B. Substantial Ground for Difference of Opinion

Defendants contend that three orders recently issued within the Central District of California demonstrate a substantial ground for difference of opinion on this issue. However, two of the cases that Defendants cite can

readily be distinguished on their facts. Specifically, although *Bryant v. City of Los Angeles, et al.*, No. CV 98-4626 (C.D. Cal. April 7, 1999), involves over-detentions, the case deals with issues of police investigation that allegedly caused the delay of plaintiffs' release. Specifically, in footnote 6, the court noted that the Sheriff was carrying out law enforcement duties. The *Bryant court found, following the rationale of Peters,* that the Sheriff represents the State when he is engaged in law enforcement duties. This conclusion comports with the *Peters* finding that the Sheriff's obligation to "investigate public offenses" falls within the Sheriff's law enforcement function. *See Peters,* 68 Cal. App. 4th at 1175 (citing Cal. Govt. Code § 26602). Accordingly, this Court is inclined to find that the relevant opinion in *Bryant* does not conflict with this Court's ruling as this Court has distinguished between the Sheriff's law enforcement and administrative responsibilities.

Similarly, *Hawkins v. Comparet-Cassani,* 33 F. Supp. 2d 1244 (C.D. Cal. 1999), is distinguishable from the instant related cases. Specifically, in *Hawkins* the Sheriff was providing security to a state court – pursuant to court order – at the time of the challenged incident. Specifically, the court found that the Sheriff's responsibility to maintain the security of the state courts falls within the Sheriff's law enforcement function. *See id.* at 1253.

Additionally, pursuant to the understanding that the "municipal and superior courts are instruments of the State and are exempt from suit in federal courts by the Eleventh Amendment," and the Sheriff was acting pursuant to a state court order, the *Hawkins* court found "that the Sheriff was acting as a state rather than a county

policymaker." *Id.* Accordingly, the Court is inclined to find that neither *Bryant* nor *Hawkins* represent a substantial ground for difference of opinion on this issue.

There still remains, however, one order recently rendered within this district which appears to directly conflict with this Court's March 8, 1999 rulings. Specifically, in *Brass v. County of Los Angeles,* No. CV 98-2052 (D.C. Cal. Feb. 1, 1999), the court found, by following the *Peters* decision, that the Sheriff acts pursuant to state authority in overseeing the administrative release of prisoners. The facts of that case are directly on point as it involves the over-detention of an individual who was entitled to be released pursuant to a court order. The mere existence of this *Brass* opinion demonstrates that there is a substantial ground for difference of opinion as to whether the Sheriff is acting on behalf of the County or State when effectuating the release of prisoners who are entitled to be released.[4] Accordingly, the Court is inclined to find that there exists a substantial ground for difference of opinion as to a controlling question of law in these related cases.

C. Interlocutory Appeal is Likely to Materially Advance the Ultimate Termination of the Litigation

It is evident that a Ninth Circuit ruling as to the controlling question of law presented in the instant cases

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[4] Indeed, other courts have found that a substantial ground for difference of opinion was demonstrated where there were two conflicting district court opinions. *See Telectronics Proprietary, Ltd. v. Medtronic, Inc.,* 836 F.2d 1332, 1338 (Fed. Cir. 1988).

may significantly alter both this Court's jurisdiction over these cases, as well as the boundaries of the claims and defenses presented at trial. *See supra* Part II.A. The cases at issue are "big" cases in that they are fact-intensive and involves numerous plaintiffs. Having this issue decided on interlocutory appeal would likely "minimize 'the total burdens of litigation on the parties and the judicial system.' " *TCF Banking & Savings v. Arthur Young & Co.*, 697 F. Supp. 362, 366 (D. Minn. 1988) (quoting 16 Wright, Miller, Cooper & Gressman, Fed. Practice & Procedure, § 3930). Additionally, Defendants will most surely bring this issue up on appeal after verdicts are rendered, assuming the issue is not address [sic] via interlocutory review. As such, having a decision on this issue now may vary well speed the termination of all litigation in these cases.

III. Conclusion

It is understood, under *Peters*, that the Sheriff acts pursuant to state authority when carrying out its law enforcement duties. However, pursuant to 28 U.S.C. § 1292(b), it is evident that the issue of whether the Sheriff acts pursuant to county or state authority in carrying out its administrative and operational responsibilities for the county jail presents a controlling issue of law to which there exists a substantial ground for difference of opinion. Further, interlocutory appeal to resolve this issue will likely materially advance the ultimate termination of litigation in this case.

Accordingly, the Court certifies the following issues to be addressed by the Ninth Circuit through interlocutory review:

Is there a distinction between the Sheriff's law enforcement duties and its administrative or operational duties? If a distinction can be made, does the Sheriff act pursuant to county authority in carrying out its administrative or operational duties? Further, in effectuating the release of individuals who are entitled to be released, does the Sheriff act in its administrative and operational capacity, and therefore pursuant to county, not state, authority?

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TENTATIVE RULING

Case Number: CV-97-3826 WJR (Ex)
CV-98-9573 WJR (Ex)
CV-98-9574 WJR (Ex)
CV-98-9575 WJR (Ex)
CV-98-9695 WJR (Ex)

Docket Number: 2

Title: Williams, et al. v. County of Los Angeles, et al.
Cleaves, et al. v. County of Los Angeles, et al.
Patchen, et al. v. County of Los Angeles, et al.
Streit, et al. v. County of Los Angeles, et al.
Shields v. County of Los Angeles, et al.

Date: Monday, March 8, 1999

Nature of Motion: (1) Defendant Los Angeles Sheriff's Department's Motion to Dismiss

(2) Defendants' Motion to Dismiss the First, Second, Third, and Fifth Causes of Action

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HON. WILLIAM J. REA, JUDGE

Marva Dillard, Deputy Clerk

TENTATIVE RULING[1]

The Court is inclined to DENY Defendant Los Angeles Sheriff's Department's Motion to Dismiss.

The Court is inclined to DENY Defendant County of Los Angeles' Motion to Dismiss the First and Second Causes of Action, and all Defendants' Motion to Dismiss the Fifth Cause of Action. However, the court is inclined to GRANT Defendants' Motion to Dismiss Plaintiffs' Third Cause of Action.

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[1] The Court recognizes that not all motions were brought in each of the related cases. Accordingly, the tentative ruling applies only to the cases in which the relevant motions were filed.

DISCUSSION

I. Defendant Los Angeles Sheriff's Department's Motion to Dismiss

A. Plaintiffs' "Doe" Amendments Were Proper

Defendant Los Angeles County Sheriff's Department ("LASD") first seeks to dismiss Plaintiffs' Complaints by alleging that Plaintiffs failed to follow proper procedure in substituting Defendant LASD as a "Doe" defendant. It is well-settled that there exists a one-year statute of limitations for naming and suing defendants in § 1983 actions brought in California. *See Cabrales v. County of Los Angeles*, 864 F.2d 1454, 1462 (9th Cir. 1988). In each of these related cases, Defendant LASD was added as a "Doe" defendant within one year following the incident that gave rise to the suit. Accordingly, the Court is inclined to find that Plaintiffs' amendments naming Defendant LASD as a "Doe" defendant were proper.[2]

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[2] Defendant LASD's sole argument as to why Plaintiffs' "Doe" amendments were improper is derived from *Optical Surplus Inc. v. Superior Court*, 279 Cal. Rptr. 194 (1991). However, Defendant LASD's reliance on this case is misplaced. *Optical* involved a situation where the plaintiff attempted to amend the Complaint to add a "Doe" defendant eighteen months after the original complaint was filed despite clear evidence that the plaintiff knew of the defendant's identity and facts supporting the wrongdoing at the time the original complaint was filed. *See id.* at 780-84. Although not explicitly stated by the *Optical* court, the plaintiff was attempting to add the defendant as a party after the statute of limitations had run. *See id.* at 783-84. It is only in those situations – where the statute of limitations has run – that a plaintiff must show that the defendant's identity and the facts supporting allegations of wrongdoing were unknown. As

B. The LASD is Amendale to Suit

Defendant LASD next seeks to dismiss Plaintiffs' Complaints by alleging that the LASD is not amenable to suit. Defendant LASD's main argument as to why the LASD is a non-suable entity rests on the recent California Appellate Court decision in *County of Los Angeles v. Superior Court (Peters)*, 68 Cal. App. 4th 1166 (1998). There, the Court held that "in setting policies concerning release of persons from the Los Angles County jail, the Los Angeles County Sheriff acts as a state officer performing state law enforcement duties, and not as a policymaker on behalf of the County of Los Angeles," and as such, the County is not liable under § 1983. *Id.* at 1178. Where the LASD is deemed to be a "state actor," the LASD is immune from liability under Eleventh Amendment principles.

In *Peters*, the plaintiff was overdetained because the sheriff believed there was an outstanding warrant for the plaintiff's arrest. In response to the plaintiff's argument that the sheriff's position in effectuating the release of prisoners was merely administrative, the Court stated that "[t]his attempt to characterize the sheriff's conduct was merely operational or administrative is not persuasive *on the facts of this case*. The function involved in this case is *determining whether to release a person who may be subject to arrest on an outstanding warrant. This is a law enforcement function.*" *Id.* at 1177 (emphasis added).

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stated above, Plaintiffs filed the "Doe" amendments within the statute of limitations. Accordingly, the Court should find Plaintiffs' amendments proper.

However, the *Peters* court does not specifically find that the sheriff acts pursuant to state authority in all of its duties. Rather, there appears to be a distinction between the sheriff's law enforcement duties and the sheriff's operational or administrative duties. To this end, the Court finds *Granville v. Plummer*, 1999 WL 66513 (N.D. Cal. Feb. 8, 1999), instructive.

In *Granville*, the plaintiff sued the County and various named defendants, alleging civil rights violations resulting from defendants' failure to provide the plaintiff with outdoor exercise, and access to the law library and legal materials. The plaintiff had been placed in a single cell in the infirmary due to kidney failure the plaintiff experienced during incarceration. The defendants allegedly ignored or refused to grant the plaintiff's multiple requests for outdoor exercise and various other access.

While referencing the same decisions the *Peters* court relied on, the *Granville* court distinguished its case as follows: "the sheriff's department and its personnel were not involved in their law enforcement duties of investigating and enforcing the state criminal laws. Instead, the defendants were engaged in their local duty of daily oversight and management of the county jail. . . . This duty of day-to-day operation of a county jail is different from the sheriff department's duty of law enforcement and preserving the peace. . . . This difference is essential in finding that the sheriff's department and its personnel were representing the county when they allegedly engaged in the violations that plaintiff contends." *Id.* at *6.

In the instant cases, the overdetention had nothing to do with the sheriff's law enforcement function. In contrast to *Peters*, there is no dispute that Plaintiffs were entitled to be released. Once the Plaintiffs were ordered to be released, the Sheriff had a duty to effectuate that order. Accordingly, the sheriff's conduct at issue relates to a purely administrative function.

As such, the Court is inclined to find, distinct from the *Peters* holding, that where the Sheriff acts in a purely administrative manner such action is pursuant to their county, not state, authority.[3]

Defendant LASD alternatively argues that – assuming *Peters* does not bar suit against the Sheriff's Department – the LASD is not a "public entity" amenable to suit. In partial support of this argument, Defendant cites to *Garcia v. County of Los Angeles*, 588 F. Supp. 700 (C.D. Cal. 1984), which, Defendant admits, the Ninth Circuit failed to follow in *Shaw v. Cal. Dep't of Alcoholic Beverage Control*, 788 F.2d 600, 604-05 & n.1 (9th Cir. 1986). As such, *Garcia* no longer appears to be controlling law. Moreover, more recently, in *Jackson v. Alameda County Sheriff's Dep't*, 1993 WL 174896 (N.D. Cal. May 14, 1993), the Northern District Court of California stated, "Plaintiff has named

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[3] The Court notes that assuming the tentative is adopted – thereby finding that the LASD acts pursuant to county, not state, authority, in effectuating the release of persons where it is clear there is no legal cause for their continued detention – it is possible that having LASD remain as a named defendant may be unnecessary and superfluous. Accordingly, the Court is inclined to hear oral argument as to whether the LASD should be dismissed from this action.

the Alameda County Sheriff's Department as a defendant. The Sheriff's Department is a public entity for the purposes of service under California Law." *Id.* at *4 (citing *Shaw*, 788 F.2d 600; *Toscano v. Los Angeles County Sheriff's Dep't*, 155 Cal. Rptr. 146 (1979)).

Defendant LASD also contends that the amendment of Cal. Evid. Code § 669.1 in some way modified the definition of a "public entity." However, considering the above case law on point with this issue, the Court should not find Defendant LASD's interpretation of this amendment compelling. It appears, instead, that § 669.1 is only intended to be an evidentiary limitation for cases involving public employees, and is not intended to redefine a "public entity." Therefore, the Court should reject Defendant LASD's argument that the LASD is not a public entity.

Accordingly, the Court is inclined to deny Defendant LASD's Motion to Dismiss as Plaintiffs have properly amended their Complaints to add the LASD as a "Doe" defendant, and *Peters* does not bar suit against the LASD in this factual situation.

II. Defendants' Motion to Dismiss the First, Second, Third, and Fifth Causes of Action

A. First and Second Causes of Action (*Monell* liability)

The County of Los Angeles ("County") moves to dismiss Plaintiffs' First and Second Causes of Action under 42 U.S.C. § 1983. Defendant County argues, in reference to the activity in question, that the sheriffs were

performing state law enforcement duties and therefore were acting on behalf of the State of California, not the County of Los Angeles. Therefore, Defendant County's argument here is predicated on a finding that the sheriffs were state actors with respect to their conduct in these cases.

However, as discussed in relation to the Sheriff's Department's Motion to Dismiss (*see supra* Part I), it appears that the sheriffs were not state actors, but they were acting on behalf of the County in the instant cases. Accordingly, the County's argument is without merit. Therefore, the Court should deny Defendant county's Motion to Dismiss the First and Second Causes of Action.

B. Third Cause of Action (Cal. Civ. Code § 52.1)

All Defendants move to dismiss Plaintiffs' Third Cause of Action, which alleges a violation of Cal. Civ. Code § 52.1, as Plaintiffs do not allege that their rights were violated in furtherance of some invidious discriminatory animus. Although § 52.1 does not state on its face that invidious discrimination is an element of a claim under the statute, a California Appellate Court found that an allegation of such discrimination was necessary to state a claim under § 52.1. *See Boccato v. City of Hermosa Beach*, 29 Cal. App. 4th 1797, 1809 (1994).

Plaintiffs argue that the decision in *Boccato* does not affect all claims under § 52.1. However, the relevant language in *Boccato* was not tailored in any way and, accordingly, it appears to apply to all claims under § 52.1.

Furthermore, several courts have read *Boccato* as imposing the broad requirement that all claims asserted under § 52.1 must include allegations of discriminatory animus. *See Dodd v. United States of America*, 1998 WL 355611, *2-*3 (9th Cir. June 15, 1998); *Nelson v. City of Irvine*, 143 F.3d 1196, 1206-07 (9th Cir. 1998); *Casabuela v. Browning-Ferris Industries*, 68 Cal. App. 4th 101, 111 (1998).

Plaintiffs essentially ask the Court to find that these cases decided subsequent to *Boccato*, are erroneous decisions in that they misinterpreted *Boccato*. However, Plaintiffs have not provided the Court with convincing evidence that the California Supreme Court would decide the issue differently.[4] Furthermore, this Court is aware of authority from two separate California appellate courts, and two Ninth Circuit decisions interpreting *Boccato* that support Defendants' position on the matter. Accordingly, the Court is inclined to find that Plaintiffs' Third Cause of Action for a violation of Cal. Civ. Code § 51.2 fails as a matter of law because it fails to allege any invidious discriminatory animus.

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[4] Plaintiff argues that *Jones v. Kmart Corp.*, 17 Cal. 4th 329 (1998), demonstrates that allegations of a discriminatory motive are not necessary to state a claim under § 52.1. However, in *Jones*, the California Supreme Court does not address the issue at all. There, the California Supreme Court found that the plaintiff's claim lacked the requisite state action. The finding regarding state action was dispositive. Accordingly, it is unclear if there were any other problems with the plaintiff's claim.

C. Fifth Cause of Action (Negligence)

All Defendants argue that Plaintiffs' Fifth Cause of Action for negligence must fail because (1) Defendants have no duty to treat Plaintiffs differently than other persons in custody merely because they are awaiting release, and (2) Defendants have statutory immunity from such liability.

1. Duty

While it is evident that "duty" is an element of a claim for negligence, Defendants argue that Plaintiffs must assert a mandatory statutory duty to proceed with their claim for negligence. However, it appears that the law distinguishes between suits seeking liability against public entities and suits seeking liability against public employees.

Although a public entity is generally not directly liable for injuries resulting from an act or omission of the public entity, a public employee, or any other person, "where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge its duty." Cal. Govt. Code § 815.6; *see also* Cal. Govt. Code § 815. Accordingly, in order to state a claim for direct liability against the County of Los Angeles, the County must have a mandatory statutory duty. In contrast, public employees are generally subject

to liability for injury caused by their acts or omissions to the same extent as a private person. *See* Cal. Govt. Code § 820(a).[5]

Notwithstanding the distinction regarding the source of the duty, it is evident that the public entities and the individual public employees involved in the instant cases had a duty to release Plaintiffs once their reason for incarceration terminated. *See* Cal. Pen Code. § 1384 ("If the [court] directs that action to be dismissed, the defendant must, if in custody, be discharged therefrom."); Cal. Pen. Code § 1295 ("The defendant [upon posting bail] must be discharged from custody."); *Sullivan v. County of Los Angeles*, 12 Cal. 3d 710, 715-16 (1974); *Shakespeare v. City of Pasadena*, 230 Cal. App. 2d 375, 384 (1964).

Despite significant evidence demonstrating the requisite duty, Defendants appear to also argue that there was not duty that established how fast Defendants were to release Plaintiffs after their release orders were issued. However, it is logical to employ a standard of reasonableness here. Moreover, Cal. Govt. Code § 815.6 indicates that public entities must exercise "reasonable diligence" in discharging their mandatory statutory duties. Accordingly, Defendants have a duty to release individuals, such as Plaintiffs, within a reasonable period of time. Reasonableness will be an issue for the jury.

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[5] Where a plaintiff asserts a valid claim against a public employee, the plaintiff may proceed against the public entity, such as the County and the Sheriff's Department in this case, based upon a theory of vicarious liability. *See* Cal. Govt. Code § 815.2(a).

2. Statutory Immunity

Defendants also argue that Plaintiffs' claims for negligence are barred because Defendants are entitled to statutory immunity that is provided to public employees for discretionary acts. Specifically, Defendants argue that failing "to adopt or enforce policies and procedures" to ensure prompt release of individuals, such as Plaintiffs, is a discretionary action, such that it is barred under Cal. Govt. Code § 820.2. Therefore, for clarification, the issue to be decided is whether it was within the discretion of the individually named Defendants to determine whether they should have adopted or enforced policies and procedures to ensure that Plaintiffs, who were entitled to be released, were released within a reasonable amount of time.

The case law confirms that determining whether certain activity is "discretionary" can be a difficult process that requires "delicate decisions." *See Johnson v. State of California*, 69 Cal. 2d 782, 794 (1968). In an attempt to guide future courts in determining what qualifies as protected "discretionary" activity as opposed to non-protected activity, the California Supreme Court in *Johnson* proposed an approach that distinguishes between "planning" decisions and "operational" decisions. *See id.* This approach has been relied upon in many cases since that time. *See, e.g., Caldwell v. Montoya*, 10 Cal. App. 4th 972, 981 (1995), *Taylor v. Buff*, 172 Cal. App. 3d 384, 389 (1985).

After a court has ordered the release of incarcerated individuals, a jailer's decision to release such individuals within a reasonable amount of time appears to be an operational decision rather than a planning decision. *See*

Martinez v. City of Los Angeles, 141 F.3d 1373 (9th Cir. 1998) (finding that LAPD officers were not immune, under Cal. Govt. Code § 820.2, from plaintiff's negligence claim based on his prolonged detention); *Sullivan v. County of Los Angeles*, 12 Cal. 3d at 722 n.11 ("Release of a prisoner after dismissal of charges against him is non-discretionary since it is specifically mandated by Penal Code section 1384."[6]). Moreover, it appears that the custodians must effectuate the order of the court either by enforcing pre-existing release procedures or adopting release procedures if none are in place. To argue that Defendants had discretion to not effectuate the release of Plaintiffs within a reasonable period of time is contrary to law.

Defendants admit that an inmate must be released once a release order is issued. Accordingly, there must be a mechanism in place to release these individuals within a reasonable period of time. Plaintiffs are not attacking a specific logistical aspect of their release. Rather, Plaintiffs are merely arguing that their release must be effectuated within a reasonable time and that Defendants were negligent with respect to this duty. While Defendants' decisions regarding the specific logistics of releases may be within their discretion, Defendants' decisions regarding the enforcement or institution of some means to effectuate releases within a reasonable time are not discretionary. Accordingly, the Court is inclined to deny Defendants' Motion to Dismiss the Fifth Cause of Action.

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[6] Although this quotation is dicta, it supports the rationale of this decision and is useful for that purpose.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Debra L. Ard, am employed in the aforesaid County, State of California; I am over the age of 18 years and not a party to the within action; my business address is 225 South Lake Avenue, Penthouse, Pasadena, CA 91101-3005.

On May 7, 1999, I served the foregoing **[Proposed] ORDER CERTIFYING FOR APPEAL ORDERS ON MOTIONS TO DISMISS** on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

(SEE ATTACHED SERVICE LIST)

X BY MAIL

I placed such envelope for deposit in the U.S. Mail for service by the United States Postal Service, with postage thereon fully prepaid.

X As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Pasadena, California, in the ordinary course of business.

X (Federal) I declare under penalty of perjury, that the foregoing is true and correct, and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 7, 1999, at Pasadena, California.

/s/ Debra L. Ard
Debra L. Ard

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APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MUNIQUE WILLIAMS; et al., Plaintiffs-Respondents, v. SHERMAN BLOCK, Sheriff, individually and and in his official capacity; et al., Defendants-Petitioners.	No. 99-80120 DC# CV-97-3826-WJR Central California ORDER FILED JUL 26 1999

Before: HAWKINS and GRABER, Circuit Judges

The Clerk shall file respondents' June 14, 1999 opposition to the petition for permission to appeal pursuant to 28 U.S.C. § 1292(b).

The petition for permission to appeal pursuant to 28 U.S.C. § 1292(b) is granted. Within 10 days of this order, petitioners shall perfect the appeal pursuant to Federal Rule of Appellate Procedure 5(d).

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MUNIQUE WILLIAMS, Plaintiff-Appellant, and MICHAEL E. WHITE, et al., Plaintiffs, v. COUNTY OF LOS ANGELES, et al., Defendants-Appellees.	Nos. 98-55609, 99-56041 99-56233 DC# CV-97-03826-WJR Central California (Los Angeles) (Filed Sep. 15, 1999)
VALERIE STREIT, et al., Plaintiffs-Appellees, v. COUNTY OF LOS ANGELES, et al., Defendants-Appellants.	Nos. 99-55897, 99-56233 DC# CV-98-09575-WJR Central California (Los Angeles)
EDDIE SHIELDS, Plaintiff-Appellee, v. COUNTY OF LOS ANGELES, et al., Defendants-Appellants.	Nos. 99-55898, 99-56233 DC# CV-98-09695-WJR Central California (Los Angeles)

RANDALL CLEAVES, et al., Plaintiffs-Appellees, v. COUNTY OF LOS ANGELES, et al., Defendants-Appellants.	Nos. 99-55899, 99-56233 DC# CV-98-09573-WJR Central California (Los Angeles)
LEELLEN PATCHEN, et al., Plaintiffs-Appellees, v. COUNTY OF LOS ANGELES, et al., Defendants-Appellants.	Nos. 99-56042, 99-56233 DC# CV-98-09574-WJR Central California (Los Angeles)
SAMUEL GLADNEY, Plaintiff-Appellee, v. COUNTY OF LOS ANGELES, et al., Defendants-Appellants.	No. 99-56310 DC# CV-99-00586-WJR Central California (Los Angeles) ORDER

On August 20, 1999, a telephone conference was held with Circuit Mediator Margaret A. Corrigan. John C. Burton and Mary Anna Henley participated on behalf of Munique Williams, et al.; Chandra Gehri Spencer participated on behalf of Sherman NMI Block, et al.

Appeal No. 98-55609 is released from the Mediation Program. All further inquiries regarding this appeal, including requests for extensions of time, should be directed to the Clerk's office.

The court has determined that this appeal nos. 99-55897, 99-55898, 99-55899, 99-56041, 99-56042, 99-56233 and 99-56310 will not be selected for inclusion in the Mediation Program. All further inquiries regarding these appeals, including requests for extensions of time, should be directed to the Clerk's office.

Appeal Nos. 99-56233 and 99-56310 are consolidated with previously consolidated appeal nos. 99-55897, 99-55898, 99-55899, 99-56041 and 99-56042.

The briefing schedule previously set by the court is amended as follows: appellants shall file an opening brief on or before November 1, 1999; appellees shall file an answering brief on or before December 1, 1999; appellants may file an optional reply brief within fourteen (14) days from the service date of the answering brief.

These seven consolidated appeals shall be calendared to be heard by the same panel which will consider the merits of appeal no. 98-55609. The Clerk of the Court is directed to schedule these eight appeals for the February 2000 Pasadena oral argument calendar.

Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further settlement discussions while these appeals are pending.

FOR THE COURT

/s/ Margaret A. Corrigan
Margaret A. Corrigan
Circuit Mediator

APPENDIX F

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VALERIE STREIT, individually and as class representative; DIEGO SANTILLANA, individually and as class representative; MICHAEL ROERICH, individually, Plaintiffs-Appellees, v. COUNTY OF LOS ANGELES, a governmental entity; JERRY HARPER, Undersheriff; MICHAEL GRAHAM, Assistant Sheriff; BARRY KING, Chief; BOB PASH, Chief; DANIEL BURT, Commander, Defendants-Appellants.	No. 99-55897 D.C. No. CV-98-09575-WJR ORDER (Filed Mar. 14, 2001)
EDDIE SHIELDS, individually and as a class representative, Plaintiff-Appellee, v. COUNTY OF LOS ANGELES, a governmental entity; JERRY HARPER, Undersheriff; MICHAEL GRAHAM, Assistant Sheriff; BARRY KING, Chief; BOB PASH, Chief; DANIEL BURT, Commander, Defendants-Appellants.	No. 99-55898 D.C. No. CV-98-09695-WJR

RANDALL CLEAVES, individually and as class representative; ALFRED CARRILLO, individually and as class representative,

Plaintiffs-Appellees,

v.

COUNTY OF LOS ANGELES, a governmental entity; JERRY HARPER, Undersheriff; MICHAEL GRAHAM, Assistant Sheriff; BARRY KING, Chief; BOB PASH, Chief; DANIEL BURT, Commander,

Defendants-Appellants.

No. 99-55899

D.C. No. CV-98-09573-WJR

MUNIQUE WILLIAMS; MICHAEL E. WHITE; APRIL MARIE COURIE; ERIC MITCHELL; DIANE RAMIREZ, individually, and as class representative; HEATHER YOUSIF, individually, and as class representative; MARGO V. BORRUP, individually, and as class representative; QUINTON COOPER; RUBY SELLARS,

Plaintiffs-Appellees,

v.

No. 99-56041

D.C. No. CV-97-03826-WJR

SHERMAN BLOCK, Sheriff, individually and in his Official Capacity,

Defendant,

and

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,

Defendant-Appellant.

LEELLEN PATCHEN, individually and as class representative; STEVEN GRAY, individually and as class representative; ISAAC TCHAKMAKJIAN, individually and as class representative,

Plaintiffs-Appellees,

v.

COUNTY OF LOS ANGELES, a governmental entity; LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellants.

MICHAEL E. WHITE; APRIL MARIE COURIE; ERIC MITCHELL; DIANE RAMIREZ, individually and as class representative; HEATHER YOUSIF, individually and as

No. 99-56042

D.C. No. CV-98-09574-WJR

class representative; MARGO V. BORRUP, individually and as class representative; QUINTON COOPER; RUBY SELLARS; LEELLEN PATCHEN, individually and as class representative; STEVEN GRAY, individually and as class representative; ISAAC TCHAKMAKJIAN, individually and as class representative; EDDIE SHIELDS, individually and as class representative; DIEGO SANTILLANA, individually and as class representative; MICHAEL ROERICH, individually; RANDALL CLEAVES, individually and as class representative,

Plaintiffs-Appellees,

v.

SHERMAN NMI BLOCK, Sheriff, individually and in his official capacity,

Defendant,

and

COUNTY OF LOS ANGELES, a governmental entity; LOS ANGELES COUNTY SHERIFF [sic] DEPARTMENT as Doe 1,

Defendants-Appellants.

No. 99-56233

D.C. No. CV-97-03826-WJR

SAMUEL GLADNEY,

Plaintiff-Appellee,

v.

COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF'S DEPARTMENT; ESTATE OF SHERMAN BLOCK; JERRY HARPER; MICHAEL GRAHAM; ROBERT MANN; BARRY KING; DANIEL BURT,

Defendants-Appellants.

No. 99-56310

D.C. No. CV-99-00586-WJR

MUNIQUE WILLIAMS; MICHAEL E. WHITE; APRIL MARIE COURIE; ERIC MITCHELL; DIANE RAMIREZ, individually, and as class representative; MARGO V. BORRUP, individually, and as class representative; QUINTON COOPER; RUBY SELLARS,

Plaintiffs-Appellees,

and

JOHNNY RAY TOLBERT; KEVIN BAXTER, individually and as class representatives and in their capacities as taxpayers; JOSEPH WHITNER, individually, and as class representative; YOLANDA CORBERT, individually, and as class representative; CASSONDRA MCNAIR,

No. 99-56766

D.C. No. CV-97-03826-WJR

individually, and as class representative; RONALD J. BORRUP, individually, and as class representative; KIRK DOUGLAS; JULIAN VALDEZ; FRANK LOPEZ; JOE SANCHEZ, JR.; MOISES CARRANZA; HAMID SHAHIAN; HERMAN WYCHE; DUC HUU PHAM; REGINA LANELL REED; ROY LEE WIMBERLY; GREGORY WHITE; EDWARD ALLEN PALMER,

Plaintiffs,

v.

SHERMAN BLOCK, individually and in his official capacity; JERRY HARPER, Undersheriff; MICHAEL GRAHAM, Assistant Sheriff; BARRY KING, Chief; DOES 1 THROUGH 1000, individually and in their official capacities,

Defendants,

and

COUNTY OF LOS ANGELES, a governmental entity,

Defendant-Appellant.

Before: PREGERSON, FERGUSON, and WARDLAW, Circuit Judges.

The panel has voted to deny the petition for rehearing. Judges Pregerson and Wardlaw have voted to reject

the suggestion for rehearing en banc, and Judge Ferguson so recommends.

The full court has been advised of the suggestion for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.

APPENDIX G

42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX H

CALIFORNIA CONSTITUTION ARTICLE V SECTION 13

§ 13. Attorney general; law enforcement

Sec. 13. Subject to the powers and duties of the Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. The attorney General shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office.

APPENDIX I

§ 22.2. Common Law – When Rule of Decision.

The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State is the rule of decision in all the courts of this State.

APPENDIX J

CALIFORNIA GOVERNMENT CODE SECTION 200

SOVEREIGNTY OF THE STATE

§ 200. Exercise of state rights

The State has the rights prescribed in this article over persons within its limits, to be exercised in the cases and in the manner provided by law.

APPENDIX K

CALIFORNIA GOVERNMENT CODE SECTION 201

§ 201. Punishment for crime

The State may punish for crime.

APPENDIX L

CALIFORNIA GOVERNMENT CODE SECTION 202

SOVEREIGNTY OF THE STATE
Div. 1

§ 202. In prisonment or confinement

The state may imprison or confine for the protection of the public peace or health or of individual life or safety.

APPENDIX M

CALIFORNIA GOVERNMENT CODE SECTION 203

§ 203. Custody and restraint of certain persons

The State may establish custody and restraint of:

(a) Mentally ill persons, insane persons, chronic inebriates, and other persons of unsound mind.

(b) Paupers for the purposes of their maintenance.

(c) Minors for the purposes of their education, reformation, and maintenance.

APPENDIX N

CALIFORNIA GOVERNMENT CODE § 12524

§ 12524. Authority to call conferences of district attorneys, sheriffs and chiefs of police

The Attorney General may, from time to time, and as often as occasion may require, call into conference the district attorneys and sheriffs of the several counties and the chiefs of police of the several municipalities of this state, or such of them as he may deem advisable, for the purpose of discussing the duties of their respective offices, with the view of uniform and adequate enforcement of the laws of this state as contemplated by Section 13 of Article V of the Constitution of this state.

APPENDIX O

CALIFORNIA GOVERNMENT CODE SECTION 12550

CONSTITUTIONAL OFFICERS
Title 2

§ 12550. Supervisory power; reports; assistance; investigations and prosecutions

The Attorney General has direct supervision over the district attorneys of the several counties of the State and may require of them written reports as to the condition of public business entrusted to their charge.

When he deems it advisable or necessary in the public interest, or when directed to do so by the Governor, he shall assist any district attorney in the discharge of his duties, and may, where he deems it necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect he has all the powers of a district attorney, including the power to issue or cause to be issued subpenas or other process.

APPENDIX P

CALIFORNIA GOVERNMENT CODE SECTION 12560

§ 12560. Supervisory power; reports; investigation or detection of crime

The Attorney General has direct supervision over the sheriffs of the several counties of the State, and may require of them written reports concerning the investigation, detection and punishment of crime in their respective jurisdictions. Whenever he deems it necessary in the public interest he shall direct the activities of any sheriff relative to the investigation or detection of crime within the jurisdiction of the sheriff, and he may direct the service of subpenas, warrants of arrest, or other processes of court in connection therewith.

APPENDIX Q

CALIFORNIA GOVERNMENT CODE § 23013

§ 23013. Department of corrections; establishment; jurisdictions; joint department of corrections in two or more counties

The board of supervisors of any county may, by resolution, establish a department of corrections, to be headed by an officer appointed by the board, which shall have jurisdiction over all county functions, personnel, and facilities, or so many as the board names in its resolution, relating to institutional punishment, care, treatment, and rehabilitation of prisoners, including, but not limited to, the county jail and industrial farms and road camps, their functions and personnel.

The boards of supervisors of two or more counties may, by agreement and the enactment of ordinances in conformity thereto, establish a joint department of corrections to serve all the counties included in the agreement, to be headed by an officer appointed by the boards jointly.

APPENDIX R

CALIFORNIA GOVERNMENT CODE § 25303

§ 25303. Supervision of officers

The board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, and particularly insofar as the functions and duties of such county officers and officers of all districts and subdivisions of the county relate to the assessing, collecting, safekeeping, management, or disbursement of public funds. It shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.

This section shall not be construed to affect the independent and constitutionally and statutorily designated investigative and prosecutorial functions of the sheriff and district attorney of a county. The board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county.

Nothing contained herein shall be construed to limit the budgetary authority of the board of supervisors over the district attorney or sheriff.

APPENDIX S

CALIFORNIA GOVERNMENT CODE § 26605

§ 26605. Jails and prisoners

The sheriff shall take charge of and keep the county jail and the prisoners in it.

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§ 26605. Jails and prisoners; authority; exception

* * * *Notwithstanding any other provision of law, except in counties in which the sheriff, as of July 1, 1993, is not in charge of and the sole and exclusive authority to keep the county jail and the prisoners in it,* the sheriff shall take charge of and *be the sole and exclusive authority to* keep the county jail and the prisoners in it, *except for work furlough facilities where by county ordinance the work furlough administrator is someone other than the sheriff.*

APPENDIX T

CALIFORNIA PENAL CODE § 4015

§ 4015. Receipt of persons committed; food, clothing and bedding; standards; expense; costs of medical care

(a) The sheriff shall receive all persons committed to jail by competent authority. The board of supervisors shall provide the sheriff with necessary food, clothing, and bedding, for those prisoners, which shall be of a quality and quantity at least equal to the minimum standards and requirements prescribed by the Board of Corrections for the feeding, clothing, and care of prisoners in all county, city and other local jails and detention facilities. Except as provided in Section 4016, the expenses thereof shall be paid out of the county treasury.

(b) Nothing in this section shall be construed in a manner that would requirethe sheriff to receive a person who is in need of immediate medical care until the person has been transported to a hospital or medical facility so that his or her medical needs can be addressed prior to booking into county jail.

(c) Nothing in this section shall be construed or interpreted in a manner that would impose upon a city or its law enforcement agency any obligation to pay the cost of medical services rendered to any individual in need of immediate medical care who has been arrested by city law enforcement personnel and transported to a hospital or medical facility prior to being delivered to and received at the county jail or other detention facility for booking.

(d) It is the intent of the Legislature in enacting the act adding this subdivision to ensure that the costs associated with providing medical care to an arrested person are borne by the arrested person's private medical insurance or any other source of medical cost coverage for which the arrested person is eligible.